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Students unable to select educational contents to a sufficient extent.

Lack of opportunity for students to initiate specific changes aimed at improving higher education.

Unequal access of small enterprises to public tenders.

Non-transparent privatisation of state-owned companies.

Inefficient fight against the hidden economy. Daily newspapers under the influence of particular interest groups.

Do you wish to live in a society where such statements from our everyday life are continually repeated?

Probably not.

If not, this means that you wish to live in a society where you have the opportunity to choose, to become involved and to make a difference.



FORUM OTVORENOG
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OPEN SOCIETY
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Openness of Society Croatia 2005



INSTITUT OTVORENO DRUŠTVO **hrvatska**
OPEN SOCIETY INSTITUTE **croatia**

Openness of Society

Croatia 2005

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Croatia 2005
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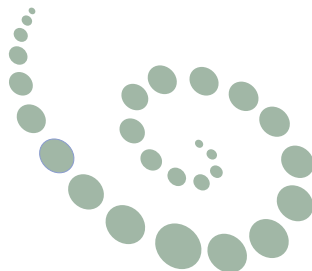
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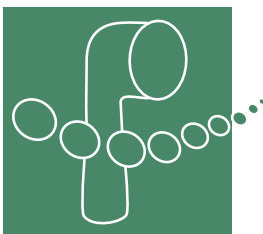




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Open Society Forum: Why, How and For Whom?

Slavica Singer



Foreword

Slavica Singer

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Do you wish to live in a society where such
statements from our everyday life are

continually repeated?

Probably not.

If not, this means that you wish to live in a
society where you have the opportunity to
choose, to become involved and to make a
difference.

Declarative statements in themselves will not
change a society from one where there is no
choice, involvement or influence, into a society
where one can choose, become involved
and make a difference. Such a change can
be brought about only through a process of
constant, joint efforts to strengthen the
independence of individuals based on
knowledge and integrity, and through the
institutional capacity to provide efficient and
equal services to meet citizens' needs.
Although there are different aspects to an
open society, drawing a parallel with the
concept of an open system might help to
clarify certain patterns. Openness and
complexity are inseparable: the reality of
personal and institutional life is based on an
uninterrupted chain of interactions between
the environment and the system (both
individual and institutional). However, what
can be done is to develop the capacities to
understand and manage these interactions.
If *closedness*, which can be accepted only

in rare and extraordinary situations, gets out of control for a longer period of time, then the viability of the entire system is threatened.

An open society is an ever elusive goal; however, the crucial thing is the process itself. Only when the process of everyday choices, participation and influence in creating a system of values to allow us to achieve harmony with people and nature by using the “seventh generation” test (ensuring that we do not close the opportunity for making choices, participating and making a difference for future generations) becomes everyday practice for all of us can we say that we have achieved an open society (as a process, and not a condition).

Invitation


Here we present the first report of the open society study which consists of a description of the conceptual framework, methodology and interpretation of the results of expert and public opinion for all the six dimensions of an open society: rule of law, education, the media, economic freedoms and entrepreneurship, transparency and the democratic quality of political processes, and minorities and marginalised groups. The composite open society indexes will be available only in the following year when the

second study has been completed. Since the aim of this project is to contribute to the development of an open society, we are open for cooperation, suggestions and discussion on all its parts, from the strengthening of the conceptual framework and the further development of the methodological approach, to the application of the results. All the results of the conducted study are in the public domain at www.soros.hr.

Acknowledgements

We are particularly proud that the idea, its elaboration through the conceptual framework, and the design of the methodology for studying societal openness have attracted such a broad group of Croatian experts. The following persons actively participated in conceiving the idea and the conceptual framework, and in drawing up the methodology: Dragan Bagić, Žarko Bajić, Ivan Burić, Gvozden Flego, Tin Gazivoda, Dražen Lalić, Slavica Singer, Marina Škrabalo, Aleksandar Štulhofer, Vesna Teršelič, Nenad Zakošek. Professor Joseph LaPalombara from Yale University, USA, provided important support in all the stages of the project development.

Two roundtable discussions (in September 2003 and September 2004) gave rise to



useful ideas in shaping the OPEN SOCIETY FORUM project which was conducted with the participation of Croatian and foreign experts or representatives of international organisations. In addition, Kalman Mizsei, Director of the UNDP regional office for Europe and new independent states, also contributed this year to improving the universal nature of the methodological approach.

The study itself involved 125 experts from all the six study areas/dimensions, who, through their expert insight, comments and suggestions, contributed significantly to the quality and credibility of the study. Without them, this study would not have been possible and we would like to take this opportunity to thank them.

Without the pioneering work of interpreting the results of the study, this stage of the project would not have been completed. For this, we wish to extend our gratitude to Davor Gjenero (minorities and marginalised groups), Zrinjka Peruško (the media), Tomislav Rešković (education), Velimir Šonje (economic freedoms and entrepreneurship), Ksenija Turković (rule of law), Nenad Zakošek (transparency and democratic quality of political processes). Marina Škrabalo, Nataša Škrbić, and Hrvoje Jurić gave their authorial contribution with two case studies, one a representative example of openness, and the

other an example of closedness.

Special thanks go to Simona Goldstein and Andrea Feldman who achieved the impossible, communicating with, and organising, the study team, experts, roundtables, designers and printers.

Our founder and donor, George Soros, has supported the project from the original concept to its implementation and to the production of this report. His continuous interest in the open society and systematic support to projects through which steps are made towards the democratisation of society was once again an invaluable contribution, and we thank him from the very heart.

A black and white photograph of several construction workers in hard hats and safety gear, standing on a large steel beam high above the ground. They are holding tools and looking in various directions. The background shows a complex network of steel structures, likely part of a bridge or a large industrial building under construction.

Open Society Forum: Why, How and for Whom?

Since 1992, the Open Society Institute - Croatia has positioned itself as a significant participant in the development of civil society in Croatia, anticipating and initiating changes whose strategic focus has always received confirmation in the political, societal and economic development of the country. With a new strategic platform based on the OPEN SOCIETY FORUM, the Open Society Institute - Croatia continues to operate proactively.

Why an Open Society Forum?

The answer comes from our belief that Croatia should have a clear vision and strategy for the development of society in the future which must be shaped through the common efforts of all the actors of social, political and economic life in Croatia. Our efforts in promoting an open society provide opportunities to individuals and interest groups to become involved in these processes.

The actual need to strengthen civil initiatives in Croatia has been intensified by the processes of preparation for joining the European Union, but also by the long-term presence of serious problems which slow

down the development of Croatia (for instance, an unwillingness to face the past, the consequences of corruption in privatisation, long-term and high unemployment, low competitiveness, the low level of entrepreneurial activity, high indebtedness, (un)concealed discrimination of particular marginalised groups). In the process of the development of civil society in transition countries, inclusion, i.e. the capacity to act in society, is of the highest order. Candidate countries must devote special attention to remove all obstacles to individual and collective freedoms and entrepreneurship; these countries should promote and stimulate societal openness and inclusion at all levels.

The Open Society Forum was launched in 2005 after two years of preparations, with the intention of identifying through research the processes of societal openness in Croatia in selected areas, and to make the results of the study accessible to the broadest public, to initiate a public debate on these results, and to offer funding for projects in the area of advocacy and policy making, with the aim of opening up "pockets" in areas with the greatest lack of openness.

Aims

- To develop an open society index which will be universal in terms of methodology, and which will allow for contextualisation through interpretation
- To identify examples of openness and closedness
- To allow for comparisons through time, by calculating the open society index annually or biannually
- To use open society indexes to promote advocacy projects and projects focused on the development of public policies
- To intensify democratisation processes
- To strengthen the participation of citizens in the processes of political decision making
- To develop the vision of Croatia as an open society

Methodological basis

The conceptual framework of the Open Society Forum embraces the following assumptions:

- An open society is a process through which human rights are made accessible to all members of society
- An open society is a package of human rights which consists of civil, political, economic and social rights

Through research and through advocacy, we will monitor the openness of Croatian society in the following areas:

- **education**
- **rule of law**
- **media**
- **economic freedoms and**

entrepreneurship

- **transparency and democratic quality of political processes**
- **minorities and marginalised groups**

The dimensions of openness are measured through criteria which are adapted according to the nature of the dimension of openness:

- **inclusion**
- **access to information**
- **freedom of expressing opinion and opportunities for public debate**
- **potential for change**
- **accountability**
- **autonomy**

The study of openness is organised annually (or biannually), by using a methodology based on expert opinion, public opinion, and an in-depth analysis of selected examples of openness/closedness through the case-study method. In this way, it will be possible to establish any gap between the expected (ideal) and the real, and the difference between expert and public opinion. Besides, the repetition of the research annually (or biannually) will allow for comparisons to be made through time.

The expected results will be available in the following formats:

- **Reports** on the state of openness in all the six areas (dimensions) through selected criteria, with an in-depth analysis of openness/closedness by means of the case-study method,
- **The open society index** which will be

established for each area of openness and for all six areas together,

- **An on-line debate** to promote public discussion on the current problems of societal openness.

Users

- NGOs - advocacy
- NGOs or other organisations involved in shaping policies - pressure to change public policies
- Government - for the change of public policies
- International institutions/donors (EU, UNDP, the World Bank, international assistance agencies...) - for designing programmes focused on Croatia

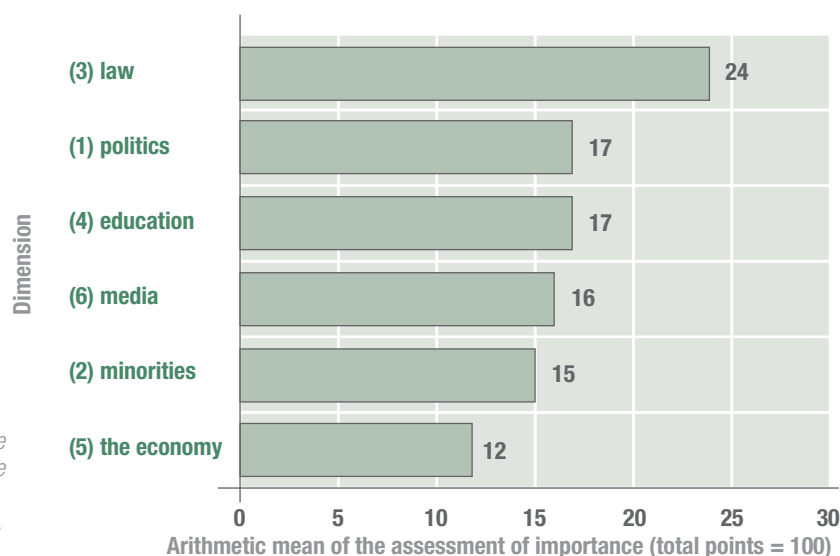
The research results have been made accessible to the public, and represent an invitation to NGOs to propose projects aimed at strengthening advocacy in the areas of societal closedness, as well as projects to help change public policies. In this way, we are attempting at the same time to measure the openness of society, and to focus on the behavioural practice of an open society, and

not on the regulatory definition of openness. At the same time, through such an approach, we are participating in building public awareness of the societal changes necessary to create an open society, and in achieving a consensus on the urgency of reforms and on the priority activities within the processes to achieve change.

The Openness of Croatian society 2005 (first results)

By describing societal openness through six dimensions, i.e. through the transparency and democratic quality of political processes, the relationship towards minorities and marginalised groups, the rule of law, education, economic freedoms and entrepreneurship, and the media, 125 interviewed experts assessed the importance of each of the identified dimensions by allocating a total of 100 points, in the following manner:

Figure 1 - Importance of individual dimensions



Base: entire sample, n=125
How to read the graph?

Out of a total of 100 points for the importance of the dimension to the total openness of society, law received an average of 24 points.

The exceptional supremacy of the relative "weight" of the importance of the rule of law, and the relatively equal importance of the democratic quality of political processes, education, media, and the relationship towards minorities and marginalised groups define in empirical terms the current scientific views on the processes of democratisation of societies, especially those in transition. The attitude towards economic freedoms and entrepreneurship may be the result of

an insufficiently clear definition of what an open, free market means (from the traditionalist understanding of market openness as laissez faire to regulation processes with the aim of creating/maintaining an efficient and functioning free market). Nevertheless, what is most important is that all the dimensions that define an open society received confirmation of their importance through the experts' opinions.

It will be interesting to see how stable these assessments of importance are from year to year, and whether and how much they will vary in other countries where the study is to be conducted.

In each of the dimensions of societal openness, experts estimated the importance of individual indicators and gave an assessment of the situation in Croatia. In doing so, they used a scale from 1 to 7, where grade 1 means that the individual indicator is the least important and a grade 7 means that it is the most important, or where grade 1 indicates that the indicator is not present in Croatia, and grade 7 that it is strongly present in Croatia. The average assessments of the experts are used to describe the difference between the importance of individual indicators and their presence in Croatia.

Regardless of which dimension of society openness is considered, two conclusions may be drawn for all of them:

1. the situation regarding societal openness in Croatia is far from what the experts regard as crucial for societal openness, which means that there is huge room for advocacy activities and for a change of public policies;
2. the agreement of the experts on the importance of the indicators in describing individual dimensions is much greater than

when assessing the situation of openness in Croatia.

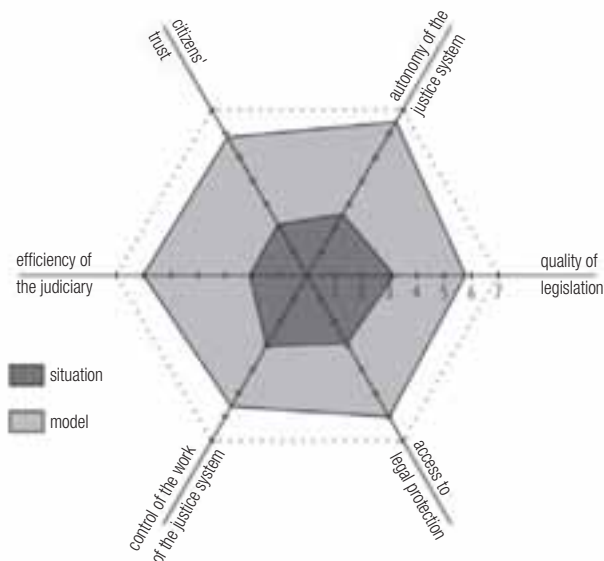
The need for advocacy is additionally stressed by the results of the survey conducted on a random and representative sample of the general population of 1500 Croatian citizens over 18, which was conducted in February 2005 within an omnibus face-to-face survey conducted by the Puls Agency. This part of the survey produced two key pieces of information:

1. the definition of "open society" used in this study ("a society where everything is freely discussed and where all citizens, regardless of their identity and belonging, have equal opportunities") was recognised by less than half of the respondents (47.1%), where there were no significant differences between women and men, although the younger and more educated the respondents, the more they accepted such a definition;
2. the citizens, just like the experts, accepted that all six dimensions were important for societal openness, but they used a different ranking of importance: they consider as most important a high-quality education system that is equal for all, followed by the democratic quality of political decision making, the rule of law, economic freedoms and entrepreneurship, and finally, freedom and the media, and minority rights.

Rule of law

Experts in the area of the rule of law did not have significant difficulties in evaluating the importance of the indicators, but the assessments of the situation of individual indicators in this dimension of societal openness in Croatia are very low: autonomy of the judiciary system (6.3 vs 2.6)¹, access to legal protection (6.0 vs 2.9), efficiency of the judiciary (6.0 vs 2.1), citizens' trust in the justice system (5.9 vs 2.1), quality of legislation (5.8 vs 3.1) and control of the work of the justice system (5.6 vs 2.6).

Figure 2. Rule of law - a dimension of an open society

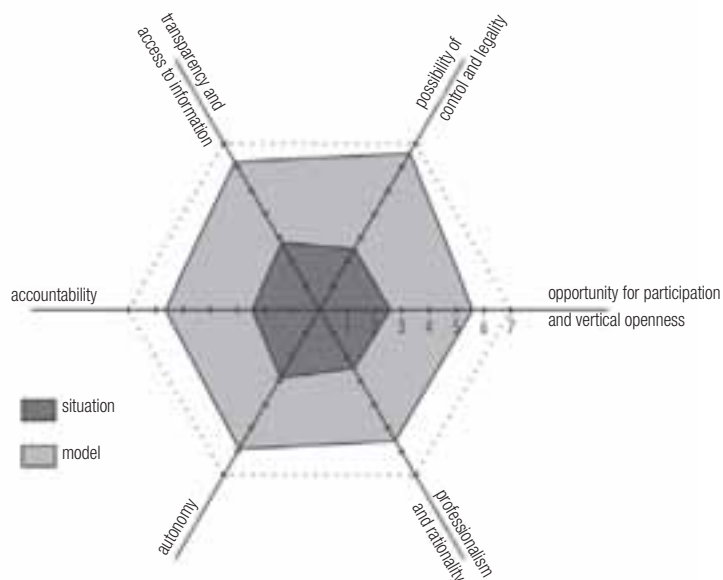


¹ The first figure relates to the assessment of importance in general, and the second figure to the assessment of the situation regarding this indicator in Croatia.

Transparency and democratic quality of political processes

Six indicators were used to measure the transparency and democratic quality of political processes as a dimension of societal openness, whose presence in assessing the openness of Croatian society was evaluated by the experts as significantly lacking: possibility of control and legality (6.6 vs 2.5), transparency and access to information (6.2 vs 2.8), autonomy (5.9 vs 2.9), accountability (5.7 vs 2.4), participation and vertical openness (5.6 vs 2.6), and professionalism and rationality (5.3 vs 2.4).

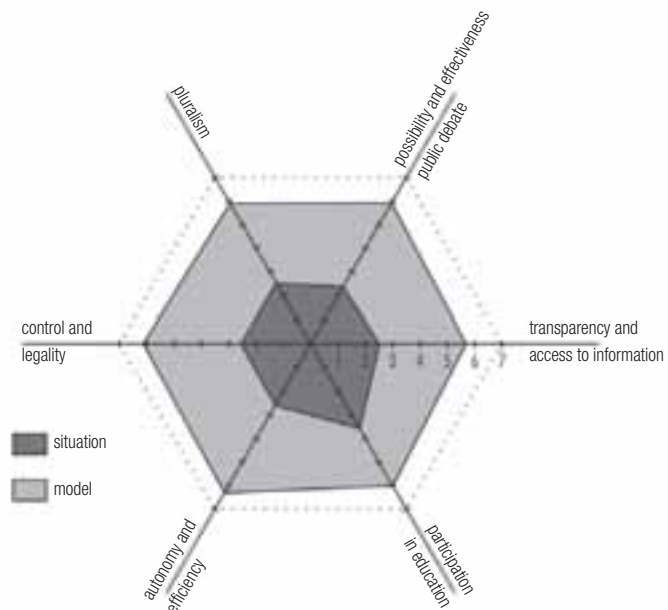
Figure 3. Transparency and democratic quality of political processes - a dimension of an open society



Education

Education as a dimension of an open society was measured by the experts through six indicators, showing that its contribution to the openness of Croatian society is also lacking: efficiency and autonomy (6.2 vs 2.6), control and legality (6.1 vs 2.5), availability and access to all citizens (6.0 vs 3.7), possibility and effectiveness of public debate (5.9 vs 2.3), pluralism (5.9 vs 2.5), and transparency of work and access to information (5.7 vs 2.5).

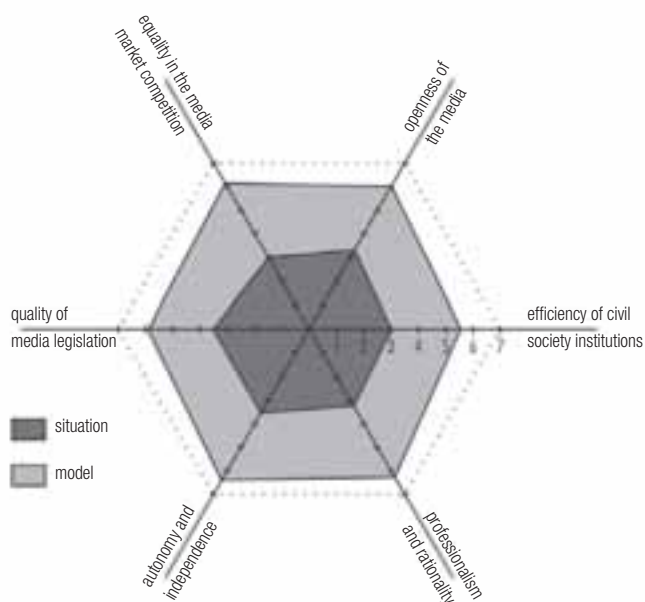
Figure 4. Education - a dimension of an open society



Media

The media as a dimension of an open society was measured by the experts through six indicators whose contribution to the openness of Croatian society was assessed as relatively better than other dimensions (although with most variability in opinions): autonomy and independence (6.3 vs 3.5), professionalism and rationality (6.2 vs 3.2), lack of monopolies and equality (6.1 vs 3.0), media openness (6.0 vs 3.2), quality of media legislation (5.9 vs 3.6), and efficiency of civil society institutions (5.5 vs 3.0).

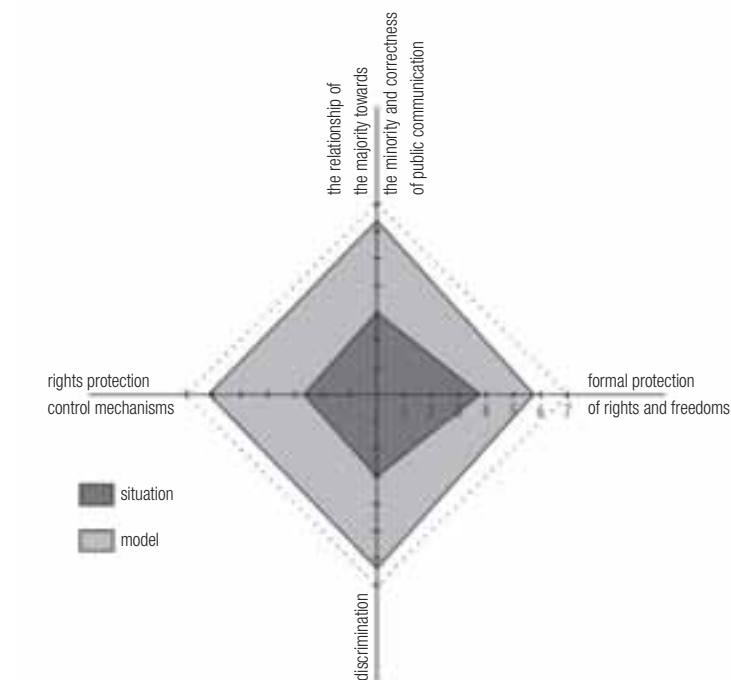
Figure 5 . The media - a dimension of an open society



Minorities and marginalised groups

The relationship towards minorities and marginalised groups as a dimension of an open society was measured by the experts through four indicators whose contribution to the openness of Croatian society was also assessed as relatively better than the contribution of other dimensions (apart from the media): quality of the fight against discrimination (6.3 vs 3.0), the relationship of the majority and correctness of public communication (6.3 vs 3.0), quality of control mechanisms (6.1 vs 2.7), and quality of formal protection of rights and freedoms (5.8 vs 3.8).

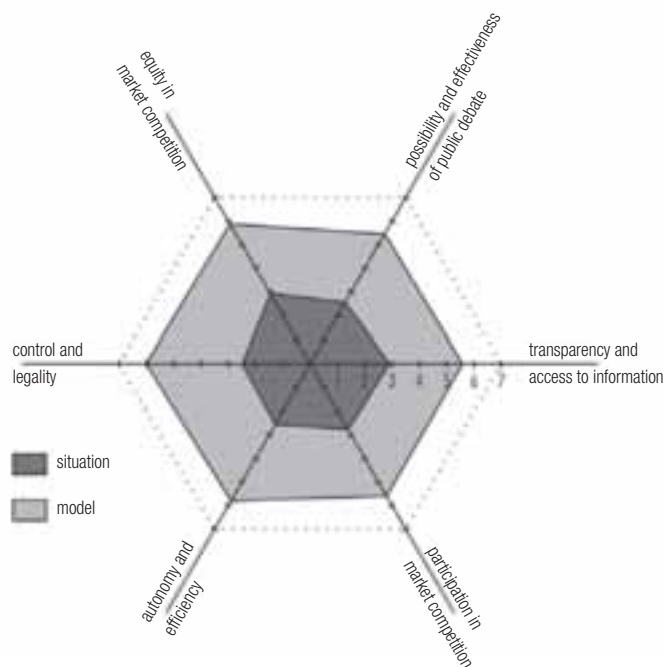
Figure 6. Relationship towards minorities and marginalised groups - a dimension of an open society



Economic rights and entrepreneurship

The experts used six indicators to measure the importance of economic rights and entrepreneurship for societal openness. Their contribution to the openness of Croatian society is far from desirable: control and legality (6.0 vs 2.4), equity in market competition (5.9 vs 2.9), autonomy and efficiency (5.8 vs 2.6), opportunity for participation (5.6 vs 2.8), access to information (5.6 vs 2.9), and effectiveness of public debate (5.3 vs 2.6).

Figure 7 . Economic rights and entrepreneurship - a dimension of an open society







3

OSI and the Promotion of a More Open Society in Croatia: Some Central Concepts

Joseph LaPalombara



OSI and the Promotion of a More Open Society in Croatia: Some Central Concepts

Joseph LaPalombara

Democratization universally implies and indeed requires that the following characteristics are present in society: 1) Individual rights are officially recognized and protected. 2) The powers of government, at every level, are limited, both constitutionally and by the division and separation of powers. 3) Institutions that make up civil society are well articulated and strong. 4) The social, economic and political systems are “inclusive,” in the sense that persons are not, on the basis of invidious distinctions, excluded from participating in each of these spheres.

Societies that combine these four characteristics, we believe, represent empirical examples of that which philosophers like Henri Bergson and Karl Popper had in mind in their discussions of the Open Society and its development. In recent years, the vast output of scholarly works that address the problems and processes of democratization, particularly those of countries said to be “in transition,” reflects that critical salience of these four characteristics.

We propose to make the concept of “inclusiveness” a working surrogate for the definition of an Open Society. The activities in which OSI Croatia will become engaged will be guided principally by this idea. We believe that its use is particularly justified, and

will be empirically very helpful, is a society that is as ethnically divided as Croatia; which has experienced several decades of authoritarian rule, which impeded social and economic, as well as political, evolution in a more open and democratic direction.

In its proposed new departure, OSI’s program will involve both a monitoring (or survey) dimension and a pro-active, policy-promoting agenda. The first of these activities in conceived essentially as an empirical effort to identify structural and institutional obstacles or bottlenecks that lie in the way of making Croatia’s economic, social and political systems more inclusive. The second, pro-active dimension would involve an organizational effort, alone but certainly in cooperation with others, to encourage public policies designed to alleviate these obstacles, and to remove bottlenecks.

Conceptually, those aspects of Croatian society that would be surveyed are those that involve the *life chances*, the *human rights and protection*, and the *economic and political participation opportunities* that are available to the nation’s citizens and residents.

Life Chances. These are understood in the classical sociological sense. Social stratification exists in all manner of societies,



but societies differ in the extent, for example, to which a stratification system is based on heredity, race, ethnicity, religion, wealth or other distinctive criteria that, in any democratic or open society, would be considered invidious.

OSI surveys under this heading would search for evidence as to the range and degree of inequality existing in, for example, type of housing, education, specialized training, medical care, jobs in the private and public sectors, etc. available in Croatia. It will be important to establish whether there are invidious discriminations practiced here, that are based on such criteria as race, gender, religion, ethnicity, class, geographic location, etc.

Human Rights. Regarding this criterion, one needs information that goes beyond some typical measures of this important concept, many of which are limited to codifying what may be written into national constitutions, or prescribed by law. Some information on certain of these rights (e.g., shelter, medical assistance, information) will be gleaned from survey information gathered under the Life Chances heading. But one needs to look empirically at other practices as well.

Limited government implies, above all, that

the political system, and the institutions that comprise it, add up to a rule of law and not of men. It would mean that there are real, not just abstract or theoretical, protections against arbitrary or discriminatory behavior practiced against citizens by those in positions of authority.

Information to be gathered under this heading would be combined with and added to already existing systems that seek to measure aspects of human rights around the world. POLITY IV is one of these, which has developed a 21-variable index of how well given countries are doing in the development and maintenance of democratic requisites. "Balkan Watch," of the American University in Washington, D.C., as well the World Institute of Development Economics at the U.N. University at Helsinki, are two other sources of information against which data collected in Croatia can and will be checked. An additional source that relates to both this and the next conceptual category would be the following two books: E.P. McMahon & T.A.P. Sinclair (eds.), *Democratic Institution Performance: Research and Policy Perspectives* (Westport, CT: Praeger, 2002); and D. Berg-Schlosser (ed.), *Democratization: The State of the Art*. (Weisbaden: VS Verlag für Sozialwissenschaften, 2004).



Economic and Political Participation.

These two dimensions will be assessed separately, but they are related conceptually, in the sense that although a free market and competition are not actually necessary conditions for democratic development, the two phenomena appear to be closely related. Thus, OSI Croatia's surveys, as well as its panel of experts (see below) will be utilized to gauge the extent to which the political and economic systems are open, or moving in that direction. Indicators will also be such as to register when, and along which component variables of each of these concepts (economic and political participation) there may be regression as well.

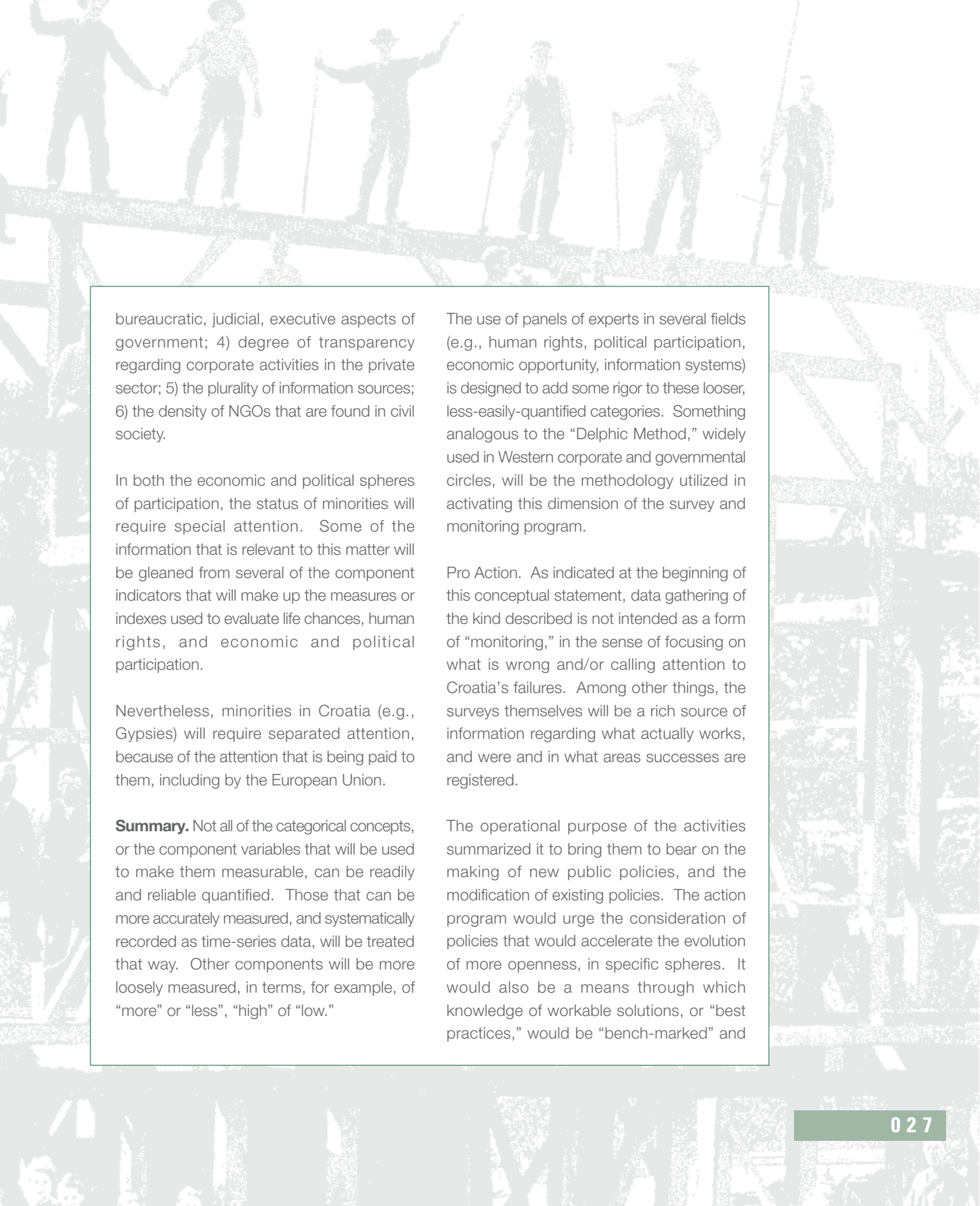
Regarding political openness, the Polity IV Index, or some variation of it, will be utilized. We will want to look at constitutional and legal provisions that related to the formation and actions of political parties, and the norms that govern party representatives who sit on legislative or other governmental bodies. Attention will be paid any activity that has the aim or effect of inhibiting the formation of and/or participation of political parties and their auxiliary organizations. Similar attention will be paid to the norms and practices relating to electoral campaigns and the act of voting.

In the economic sphere, degree of openness

will obviously be immediately affected by the distribution of life chances, such as education, access to medical assistance, or to specialized training, etc. Attention will also be paid the degree to which the labor market itself is open to all qualified, or potentially qualified, persons, regardless of considerations that are invidious (e.g., gender, ethnicity, religion, age, etc.),

Beyond these obvious measures, special attention will be given the question of entrepreneurial development. Societies in transition typically require special programs, designed to encourage the emergence of small and medium size business enterprises, and to provide the financial assistance as well as the training that this aspect of development requires. Again, openness will imply that access to this particular means of participating validly in the economy be made available on a non-discriminatory basis.

In both of these spheres, effective participation will be immediately and profoundly affected by universality with which information is available to the nation's citizens. This factor is deeply influenced by such component variables as: 1) the structure of ownership of the media; 2) laws and practices involving governmental censorship; 3) degree of transparency regarding the public



bureaucratic, judicial, executive aspects of government; 4) degree of transparency regarding corporate activities in the private sector; 5) the plurality of information sources; 6) the density of NGOs that are found in civil society.

In both the economic and political spheres of participation, the status of minorities will require special attention. Some of the information that is relevant to this matter will be gleaned from several of the component indicators that will make up the measures or indexes used to evaluate life chances, human rights, and economic and political participation.

Nevertheless, minorities in Croatia (e.g., Gypsies) will require separated attention, because of the attention that is being paid to them, including by the European Union.

Summary. Not all of the categorical concepts, or the component variables that will be used to make them measurable, can be readily and reliably quantified. Those that can be more accurately measured, and systematically recorded as time-series data, will be treated that way. Other components will be more loosely measured, in terms, for example, of “more” or “less”, “high” or “low.”

The use of panels of experts in several fields (e.g., human rights, political participation, economic opportunity, information systems) is designed to add some rigor to these looser, less-easily-quantified categories. Something analogous to the “Delphic Method,” widely used in Western corporate and governmental circles, will be the methodology utilized in activating this dimension of the survey and monitoring program.

Pro Action. As indicated at the beginning of this conceptual statement, data gathering of the kind described is not intended as a form of “monitoring,” in the sense of focusing on what is wrong and/or calling attention to Croatia’s failures. Among other things, the surveys themselves will be a rich source of information regarding what actually works, and were and in what areas successes are registered.

The operational purpose of the activities summarized it to bring them to bear on the making of new public policies, and the modification of existing policies. The action program would urge the consideration of policies that would accelerate the evolution of more openness, in specific spheres. It would also be a means through which knowledge of workable solutions, or “best practices,” would be “bench-marked” and

more widely shared. Such information would apply to modes of organization and behavior in the private sector as well.

OSI, of course, cannot and should not engage in this policy-promoting activity all by itself. Efforts will be made to involve other organizations in civil society to become actively involved as well, perhaps in broad-gauged coalitions designed to affect or influence public policy.

In some of the promotional or change-oriented activities, it is possible that the UNDP, or the World Bank, might become involved. The point being that, in the next phase of its development, OSI Croatia should both seek to create action-oriented partnerships and coalitions, or to join existing ones, where the change-oriented public policy goals, or similar objectives, are shared by others.

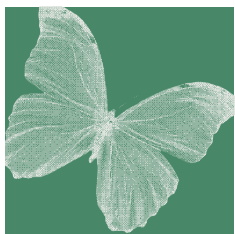




4

Open Society Index: Theoretical Concept, Methodology and Measurement

Aleksandar Štulhofer



Open Society Index: Theoretical Concept, Methodology and Measurement

Aleksandar Štulhofer

As part of the *Open Society Forum* (OSF) Project, the work on the development of the open society index (hereinafter - OSI) commenced in early 2004. From the outset, OSI was designed as the backbone of the project, with the following objectives:

- (a) Quantitative monitoring of the dynamics of the opening / closing of society;**
- (b) Identification of “critical points” and generators of closedness,** which are analysed by qualitative methods in the next step (see the chapter dealing with the case studies);
- (c) Quantitative comparison of the degree of openness of (post)transition societies of Central, Eastern and Southeast Europe.**

Based on expert opinion,¹ the OSI was designed as an instrument to enable the continual measurement of the degree of societal openness in a given society, but also to allow for a comparison of societal opening in the countries of the region.² Calculation of the OSI should be effected every year, or at least once in two years.

Monitoring the dynamics of opening in a given society, and comparing the degree of openness in different societies, is based on seven figures within the OSI. These are the

average values of six basic dimensions of an open society and the general index value, the figure which indicates the overall degree of openness of a given society.

The Croatian pilot project includes a public opinion poll,³ whose objective was to find to what extent the general public understands the concept of an open society, and how it assesses the openness of Croatian society. In the long term, the public opinion poll enables the monitoring of the effectiveness of advocacy campaigns based on the analysis of the OSI. The decision about whether or not the public opinion poll will be included in the final research package has not yet been made.

Step One: Theoretical Framework and Operationalisation

The OSI is based on the model of an open society, i.e., its theoretical understanding, which highlights six key dimensions of societal openness (for details, see the theoretical chapter):

- (a) The rights of minorities and marginalised groups**



(b) The education system

(c) The rule of law

(d) Economic freedoms and entrepreneurship

(e) The media

(f) The transparency and democratic quality of political processes

The areas indicated above are, according to a theoretical elaboration, basic generators of societal openness, or closedness. Following the discussions among the members of the OSF Project Committee, the areas/dimensions are operationalised through five criteria: (1) scope (inclusiveness), (2) transparency of activities, (3) openness to criticism and public debate, (4) potential for change, and (5) accountability. In order for these universal criteria to translate into measurable indicators, in November 2004 a corresponding questionnaire was sent to a large group of experts (N =120).⁴

Although the experts were given the task of identifying concrete phenomena/processes whose measurement would lead to a situation assessment - i.e., degree of openness of society - in each of the six dimensions, and thereby to the GVI, their responses also revealed something else. Namely, an analysis of the collected material indicated that the

idea of universal criteria is unsustainable. Since each of the areas/dimensions contains specific qualities which require special criteria, a new list of criteria was developed:

(a) Rights of Minorities and Marginalised Groups

- Formal protection of the rights and freedoms of minorities and marginalised social groups
- Existence of discrimination of minorities and marginal groups
- Control mechanisms of the protection of rights of minorities and marginalised groups
- Attitude of the majority towards the minority in public communication

(b) Education System

- The possibility of participation in education
- Pluralism in education
- The possibility and efficiency of public debate
- Transparency
- Independence
- Quality education processes
- Lawfulness and compliance control

(c) The Rule of Law

- Quality of legislation

- Availability of legal protection for all citizens
- Quality control of the work of the judiciary
- Efficiency of the system
- Independence
- Public trust in the judiciary

(d) Economic Freedoms and Entrepreneurship

- The possibility of participation in market competition
- Equality in market competition
- The possibility and efficiency of public debate
- Transparency
- Independence
- Lawfulness and compliance control

(e) The Media

- Independence
- Professionalism
- Absence of monopolies (equality of media market competition)
- Openness (scope)
- Media legislation
- Efficiency of civil society institutions in the area of the media

(f) Democratic Quality of Political Processes

- The possibility of participation and vertical openness

- Lawfulness and compliance control
- Transparency
- Accountability
- Independence
- Professionalism

Step Two: Development of the Questionnaire, Fine Tuning and Data Collection

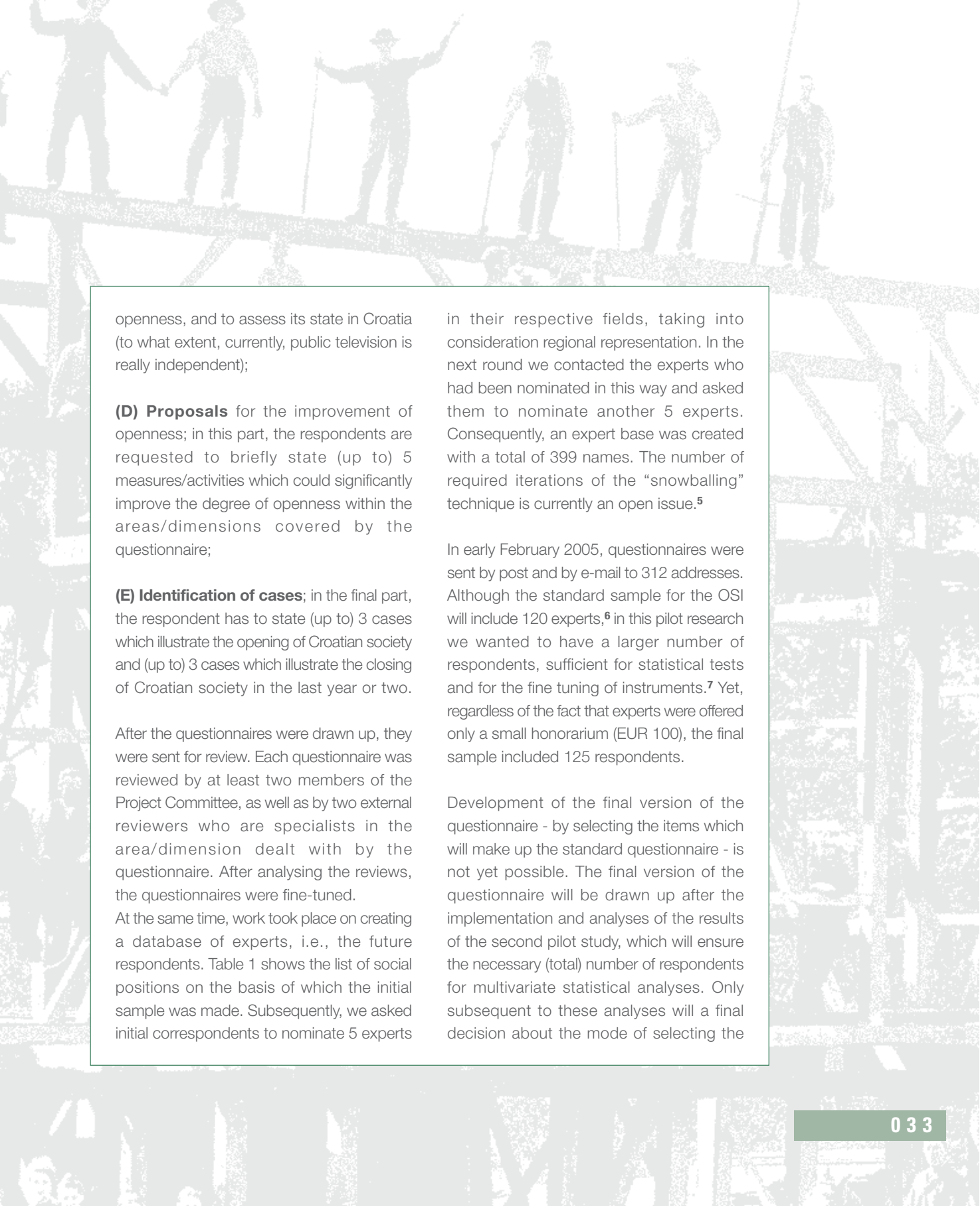
In the next step, six questionnaires were developed, one for each area/dimension. Each questionnaire consists of the following parts:

(A) Introduction, in which the importance of the areas/dimensions for societal openness is explained;

(B) Instructions for filling out the questionnaire;

(C) Indicators

(each criterion is operationalised with twenty or so indicators); the respondent uses a seven-point scale to indicate the extent to which a specific indicator (e.g. "independence of public television from specific political options") is important for ideal societal

A black and white photograph of several construction workers in hard hats and safety gear, standing on a large steel beam high above the ground. They are holding tools like ropes and pulleys, appearing to be in the process of building or maintaining a large structure.

openness, and to assess its state in Croatia (to what extent, currently, public television is really independent);

(D) Proposals for the improvement of openness; in this part, the respondents are requested to briefly state (up to) 5 measures/activities which could significantly improve the degree of openness within the areas/dimensions covered by the questionnaire;

(E) Identification of cases; in the final part, the respondent has to state (up to) 3 cases which illustrate the opening of Croatian society and (up to) 3 cases which illustrate the closing of Croatian society in the last year or two.

After the questionnaires were drawn up, they were sent for review. Each questionnaire was reviewed by at least two members of the Project Committee, as well as by two external reviewers who are specialists in the area/dimension dealt with by the questionnaire. After analysing the reviews, the questionnaires were fine-tuned.

At the same time, work took place on creating a database of experts, i.e., the future respondents. Table 1 shows the list of social positions on the basis of which the initial sample was made. Subsequently, we asked initial correspondents to nominate 5 experts

in their respective fields, taking into consideration regional representation. In the next round we contacted the experts who had been nominated in this way and asked them to nominate another 5 experts. Consequently, an expert base was created with a total of 399 names. The number of required iterations of the “snowballing” technique is currently an open issue.⁵

In early February 2005, questionnaires were sent by post and by e-mail to 312 addresses. Although the standard sample for the OSI will include 120 experts,⁶ in this pilot research we wanted to have a larger number of respondents, sufficient for statistical tests and for the fine tuning of instruments.⁷ Yet, regardless of the fact that experts were offered only a small honorarium (EUR 100), the final sample included 125 respondents.

Development of the final version of the questionnaire - by selecting the items which will make up the standard questionnaire - is not yet possible. The final version of the questionnaire will be drawn up after the implementation and analyses of the results of the second pilot study, which will ensure the necessary (total) number of respondents for multivariate statistical analyses. Only subsequent to these analyses will a final decision about the mode of selecting the

sample be made, the alternatives being: (a) a survey of *randomly selected* respondents (in each round the questionnaire is sent to various addresses) and (b) a survey of *top-notch experts* (the questionnaire is sent to the same people each time).⁸

Step Three: Link between the OSI and Case Studies

In addition to the calculation of the general degree of openness of society (GVI), the OSI enables a number of important insights to be gained: (a) ranking the dimensions according to the relative importance for the openness of a given society,⁹ (b) ranking the dimensions according to the degree of openness in the given society,¹⁰ and - by combining the two - (c) perceiving the dimension where closedness is the most problematic in terms of society. In addition, the final part of the questionnaire is used to identify the “critical points” and “success stories”, from which the most frequently mentioned (one good and one bad case) are then processed in detail. The qualitative part of the OSF project is based on the responses of experts to the last two questions in the questionnaire, in which a description is sought

of (up to) 3 cases/situations which have contributed to the opening and closing of the given society, respectively. The most frequently mentioned positive and the most frequently mentioned negative example become subjects for two case studies.

An alternative manner of determining the subject of the case studies would begin with the identification of the best and worst rated area/dimension, after which the most frequently mentioned negative example within the worst rated dimension would become the subject of the first case study, whereas the most frequently mentioned positive example within the best rated dimension would become the subject of the second one. The final assessment of the manner of selection of the case studies will be made after the analysis of the second pilot study.

Step Four: Public Opinion Poll

A public opinion poll was undertaken in order to establish if the general public is, and to what extent, familiar with the idea of an open society, and to what degree it assesses the openness of Croatian society. The importance



of this assessment of openness is shown in a time perspective, in which the dynamics of the assessment of the general public indicates the (non)efficiency and scope of advocacy activities arising from expert assessments. Successful and publicly recognised advocacy should result in the perception of an increase in the degree of openness in the given society. The Croatian pilot study, the so-called omnibus public opinion poll, included the question on what an open society is (5 different definitions were provided), questions about the relative importance of six basic dimensions of an open society (6 items) and a number of questions from which, by using statistical analysis, the openness assessment index (30 items) will be developed.¹¹

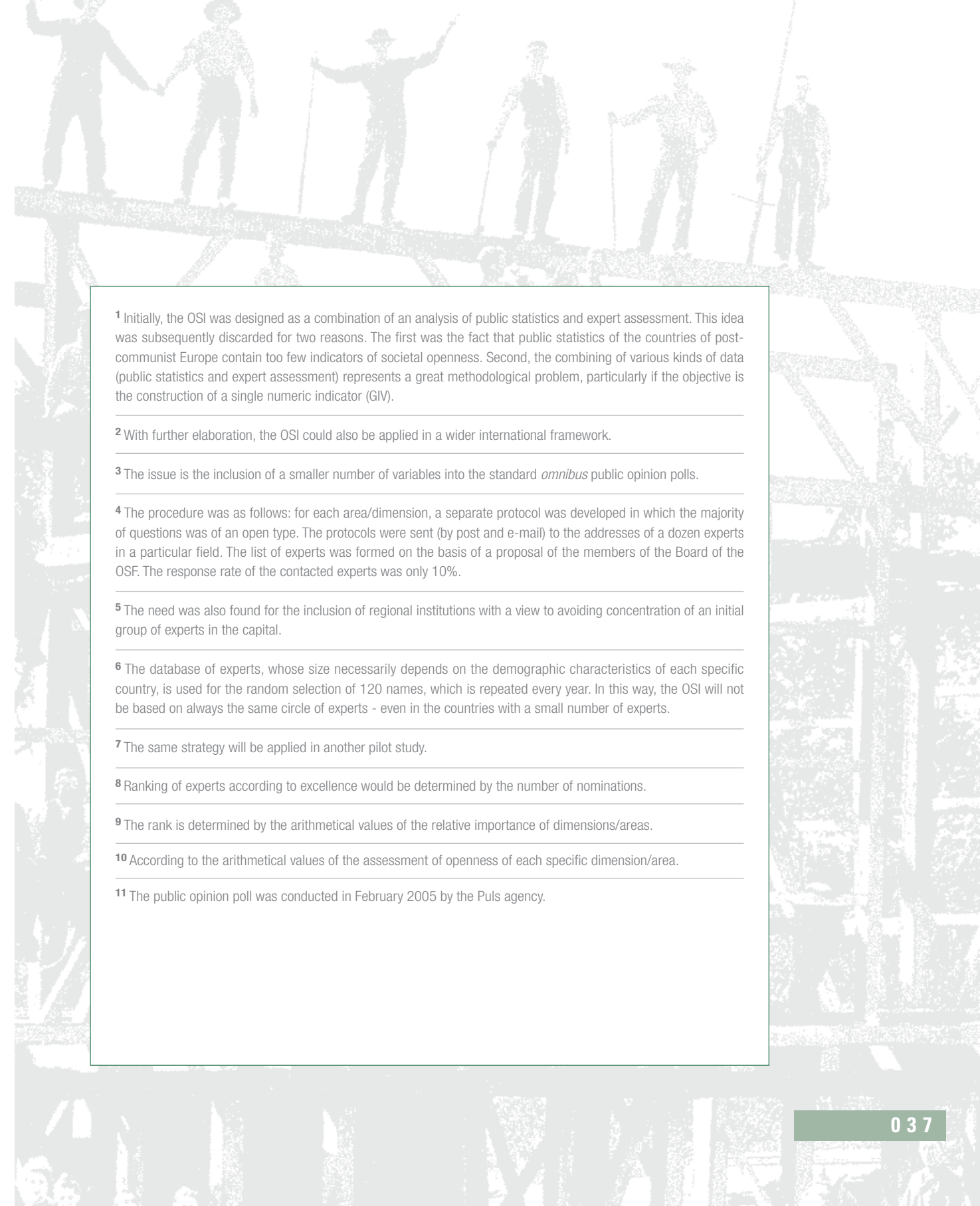
Step Five: the OSI and Advocacy Activities

Considering that the Open Society Forum Project consists of three parts - the development of the OSI, the preparation of two case studies, and advocacy - it should be noted that there is a double connection between the OSI and advocacy activities. On one hand, the focus and objectives of

advocacy are determined by an analysis of the data collected by the surveying of experts. Identification of “critical points”, within specific dimensions, in which closure is most present, is the basic landmark for advocacy activities. In other words, the focus and objectives of advocacy ensue from an analysis of the questionnaire described above. In the long term, bearing in mind the continuity of calculation of the OSI, it becomes clear that the dynamics of the values of the OSI will also be a kind of test of the efficiency of advocacy undertaken in the previous period. An increase in the index value would indirectly imply efficiency in the advocacy activities, whereas a fall or stagnation would imply lower efficiency or even failure. Of course, the above should be taken with great caution. Namely, it is impossible to differentiate - in a precise and methodologically convincing manner - between the influence of advocacy and the possible impact on the OSI values of some other social developments (such as, for instance, changes in the international relations or foreign policy of a country).

Table 1 - Structure of the Initial Sample

Professional status of the members of the initial sample	Area / Dimension					
	Law	Education	Minorities	Entrepreneurs.	Media	Politics
1) Dean of the largest faculty of economics in the country				x		
2) Dean of the largest faculty of political science in the country	x		x		x	x
3) Dean of the largest faculty of philosophy in the country		x				
4) Head of the sociology department at the largest faculty in the country		x	x		x	x
5) Head of the department of philosophy at the largest faculty in the country	x		x		x	x
6) Dean of the largest faculty of law in the country	x	x				
7) Dean of the teacher training college in the capital or head of the pedagogy department at the largest faculty in the capital		x				
8, 9, 10) Editors of the business section in three dailies with the biggest circulation				x	x	
11, 12, 13) Editors of the political section of three dailies with the biggest circulation			x	x	x	x
14, 15) Editors-in-chief of two political weeklies with the biggest circulation					x	x
16) President of the largest society in terms of membership of the most numerous ethnic minority in the country			x			
17) President of the largest trade union in the country in terms of membership		x		x		x
18) President of the largest Employers' Association in the country in terms of membership				x		
19) President of the section for social sciences of the Academy of Arts and Sciences	x	x	x			x
20) President of the Open Society Institute	x	x	x	x	x	x
21) Ombudsman for Gender Equality			x			
22) President of the most influential organisation for the protection of human rights	x		x			
23) President of the most influential organisation for the protection of women's rights			x			
24) President of the Association of Journalists					x	
25) President of the most influential trade union in the country				x		
Total number by area/dimension	6	7	10	7	8	8

A black and white photograph of six construction workers standing on a large horizontal steel beam. They are wearing hard hats and safety gear. Some are holding vertical rods or tools. The background shows a complex network of steel beams and structural elements of a building under construction.

¹ Initially, the OSI was designed as a combination of an analysis of public statistics and expert assessment. This idea was subsequently discarded for two reasons. The first was the fact that public statistics of the countries of post-communist Europe contain too few indicators of societal openness. Second, the combining of various kinds of data (public statistics and expert assessment) represents a great methodological problem, particularly if the objective is the construction of a single numeric indicator (GIV).

² With further elaboration, the OSI could also be applied in a wider international framework.

³ The issue is the inclusion of a smaller number of variables into the standard *omnibus* public opinion polls.

⁴ The procedure was as follows: for each area/dimension, a separate protocol was developed in which the majority of questions was of an open type. The protocols were sent (by post and e-mail) to the addresses of a dozen experts in a particular field. The list of experts was formed on the basis of a proposal of the members of the Board of the OSF. The response rate of the contacted experts was only 10%.

⁵ The need was also found for the inclusion of regional institutions with a view to avoiding concentration of an initial group of experts in the capital.

⁶ The database of experts, whose size necessarily depends on the demographic characteristics of each specific country, is used for the random selection of 120 names, which is repeated every year. In this way, the OSI will not be based on always the same circle of experts - even in the countries with a small number of experts.

⁷ The same strategy will be applied in another pilot study.

⁸ Ranking of experts according to excellence would be determined by the number of nominations.

⁹ The rank is determined by the arithmetical values of the relative importance of dimensions/areas.

¹⁰ According to the arithmetical values of the assessment of openness of each specific dimension/area.

¹¹ The public opinion poll was conducted in February 2005 by the Puls agency.

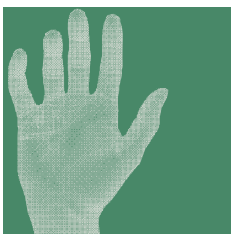




5

Using Case Study Methods in the Drafting of the Open Society Index

Dražen Lalić



Using Case Study Methods in the Drafting of the Open Society Index

Dražen Lalić

In the drafting of the open society index as an integral part of the Open Society Forum project, the following methods were used: the survey (a public opinion poll using a representative sample of Croatian citizens of legal age); the structured written interview (on a sample of 120 experts in six social dimensions recognised as being of key importance for social openness); and the case study (two studies chosen on the basis of experts' evaluations). Quantitative and qualitative research methods were combined in the process so as to establish the dynamics of the opening/closing of society, to recognise the critical points in this dynamics, to create the conditions for longitudinal monitoring of this process in Croatia, and to compare the level of openness in (post)transition societies of Central, Eastern and Southeast Europe. The results of this research will be applied to advocate social openness, that is, to encourage the given societies to become more open.

This part of the report consists of the following subsections: establishing the case study methods, describing the procedure used in the process of choosing the cases; and showing the methodological aspects used in the drafting of the two case studies (one being an illustration of the process of the opening of Croatian society, the other of its closing).

Determining Case Study Methods

The case study is a research method used in the social sciences for basic exploration, description or explanation of social phenomena where it is especially important to describe the interrelation between any given phenomenon and its social context. The case study is used to investigate temporally and spatially limited segments of modern, ever changing social phenomena conditioned by their respective contexts.¹ This method studies such phenomena as are "placed in precisely determined temporal and spatial frames and such phenomena as can be analytically isolated as individual problems"² (Kasapovic, 1998:95).

The special value of the case study is that it can provide a detailed, in depth description of a specific phenomenon, of complex relationships between different phenomena, of the influence of the relevant context, and of the investigation of situations whose results are not sufficiently clear after other research methods have been used. The case study is therefore conducted in relation to subjects which, due to their complexity, their rather specific nature and their other characteristics,

are not well suited to different, and especially not to “classical”, research methods. Although the accent is put on qualitative data and interpretation, the case study may also include a mix of quantitative and qualitative data and analytical procedures. Also, although the accent here is placed on the direct observation and investigation of real phenomena, in conducting a case study primary and secondary written sources are used in connection with the specific phenomenon - which is also the subject of research - as well as its context (statistical entries, media writings, existing social and scientific analyses).

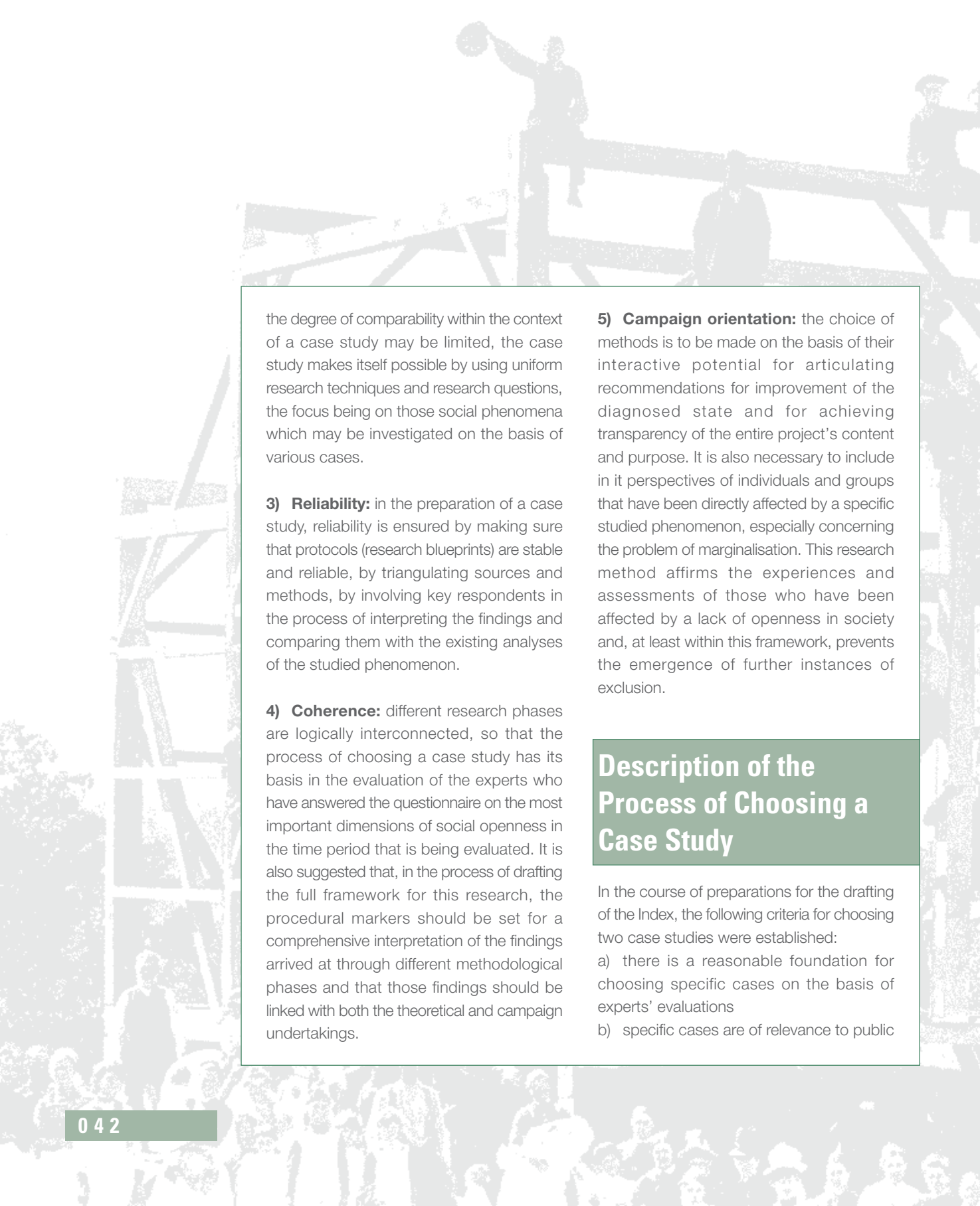
Since there is less chance of making generalisations exclusively on the basis of a case study than there is on the basis of other methods (for example, research based on a representative sample, or diachronic research), the case study is particularly useful as a complementary method for achieving a targeted, in-depth insight into already determined aspects of some broader phenomenon that is being researched. It is possible, on the basis of a case study, to arrive at specific generalisations by comparing the deductions of the case study with theoretical assumptions on one hand, and research conclusions with the same subject

developed through the use of other methods on the other. In the course of the process it would be useful, in the long run, to create a basis for those case studies which treat the same broader phenomenon and which may be compared in terms of the consistency of key research questions, as well as in terms of focusing on the examination of the processes and reasons that lead to a certain phenomena, instead of being directed towards the spread and intensity of these phenomena.

Case studies are based on the following methodological principles.

1) Continuity: preparing a social openness case study has, in the Open Society Forum Project, been postulated as a consecutive, continuous study of previously determined aspects of social openness in previously defined one or two year periods, through case analyses within previously defined social phenomena relevant for a better understanding of social openness.

2) Comparability: the methodology should be unique; since this is a campaign investigation encompassing a two-year period at most, the accent is put on timely implementation and application. Although



the degree of comparability within the context of a case study may be limited, the case study makes itself possible by using uniform research techniques and research questions, the focus being on those social phenomena which may be investigated on the basis of various cases.

3) Reliability: in the preparation of a case study, reliability is ensured by making sure that protocols (research blueprints) are stable and reliable, by triangulating sources and methods, by involving key respondents in the process of interpreting the findings and comparing them with the existing analyses of the studied phenomenon.

4) Coherence: different research phases are logically interconnected, so that the process of choosing a case study has its basis in the evaluation of the experts who have answered the questionnaire on the most important dimensions of social openness in the time period that is being evaluated. It is also suggested that, in the process of drafting the full framework for this research, the procedural markers should be set for a comprehensive interpretation of the findings arrived at through different methodological phases and that those findings should be linked with both the theoretical and campaign undertakings.

5) Campaign orientation: the choice of methods is to be made on the basis of their interactive potential for articulating recommendations for improvement of the diagnosed state and for achieving transparency of the entire project's content and purpose. It is also necessary to include in it perspectives of individuals and groups that have been directly affected by a specific studied phenomenon, especially concerning the problem of marginalisation. This research method affirms the experiences and assessments of those who have been affected by a lack of openness in society and, at least within this framework, prevents the emergence of further instances of exclusion.

Description of the Process of Choosing a Case Study

In the course of preparations for the drafting of the Index, the following criteria for choosing two case studies were established:

- a) there is a reasonable foundation for choosing specific cases on the basis of experts' evaluations
- b) specific cases are of relevance to public

advocacy of social openness

c) there exists a need to establish a continuity in the observation of social themes and phenomena related to social openness or closedness

a) There is a reasonable foundation for choosing specific cases on the basis of experts' evaluations

All the experts, no matter which dimension they may have been responsible for evaluating, were asked the following questions:

1. Please list three genuinely illustrative examples (a situation, a case, an event) from Croatian public life (societal, political, economic events) which took place in the preceding period and which testify to (demonstrate, indicate) the opening up, or openness, of society in Croatia.

2. Please list three genuinely illustrative examples (a situation, a case, an event) from Croatian public life (societal, political, economic events) which took place in the preceding period and which testify to (demonstrate, indicate) the closing, or the closedness, of society in Croatia.

For these questions to produce the desired

results (through the listing of illustrative examples of societal openness or closedness) it was important to make sure that respondents were familiar with the definition of societal openness (as outlined in the introductory part of the questionnaire). The questions were asked at the end of the questionnaire, within the context of which the experts then evaluated, in their respective fields of expertise, the degree of openness, or closedness, of society. In the process of evaluation, these experts could list examples related to societal events in a comprehensive manner, not only those related to the societal events' respective dimensions.

Examples listed by experts in the process of evaluation were grouped by subject, so that the frequency with which they occurred could be established. A total of 339 examples demonstrating societal openness were listed, as well as 330 examples which demonstrated a lack of societal openness. What follows is an outline of the most frequent themes related to openness, or the opening of society (including 155 out of a total of 339 examples that were listed by experts), and nine of the most common subjects related to closedness or the closing of society (including 137 out of a total of 330 examples listed by experts).

Table 1 - The most frequent subjects related to openness

SUBJECT: OPENNESS OF SOCIETY	Frequency	Dimension of Progress
The Government, the media and the public are more tolerant towards Serbs and other ethnic minorities	30	ethnic minorities
The (reluctant) resignation of Minister Žužul caused by public opinion and and scandals revealed by the media	29	political responsibility, influence of the public
The Puljiz Affair - support of the media, the public, and various associations to Helena Puljiz and the removal of the director of the Counter-Intelligence Agency (POA) from his post - the work of secret services presented in a negative light	25	political responsibility, influence of the public
The government, society and the media are more tolerant towards ethnic minorities and various marginalised groups, especially towards the LGBTIQ community, the Roma minority, invalids, etc.	22	ethnic minorities
The media have taken an active stand towards political cases; journalists are more independent from politics; corruption scandals are disclosed.	13	influence of the public
Higher independence of the Croatian television (HRT) from the Government and politics as well as better quality reporting	10	influence of the public
Freedom of action, higher degree of transparency in the work of and influence exerted by civil society institutions, but especially by those institutions which fight against discrimination and marginalisation - Croatian Helsinki Committee, Gong, B.a.b.e. and Iskorak	9	ethnic minorities, influence of the public
Consensus between the Government and the opposition in regard to Croatia's accession to the EU - and in regard to Croatia's strategic goals	9	reform processes
The Ministry of Science, Education, and Sports has opened a web discussion about important issues of education and is showing more willingness to change its decisions as a result of public discussion	8	transparency of institutions, reforms, influence of the public

Table 2 - The most frequent subjects related to the closing of society

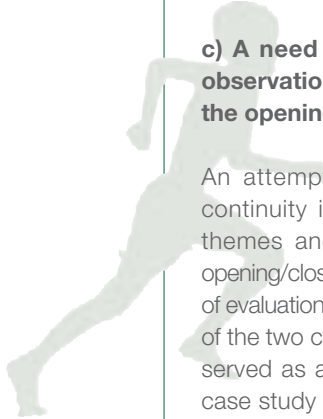
SUBJECT: CLOSEDNESS OF SOCIETY	Frequency	Dimension of closedness
The influence of the Catholic Church on the judiciary regarding sexuality, reproductive rights and the rights of sexual minorities	26	ethnic minorities, human rights
Primitivism and the large influence exerted by POA (Counter-Intelligence Agency); unclear role of and supervision over the secret services, intelligence investigations of the work of journalists	24	freedom in the media, transparency of the institutions
Non-transparency in the sale of state-owned companies, the granting of concessions and subsidies; support of monopolies	21	transparency
The Gotovina case and the problem of incomplete cooperation with ICTY	13	inadequate degree of the rule of law
Postponing or practically abolishing the founding of the Commission for the Conflict of Interest; a high degree of corruption and conflict of interest is to be found within the ranks of persons in power	13	political responsibility
Evading the application of an integration policy for the Roma minority - inadequate integration of Roma children in schools	12	ethnic minorities
The Croatian population displays intolerance and xenophobia towards others - towards ethnic minorities, gays, foreigners, asylum seekers; propagation of racial intolerance and xenophobia, crimes based on racial hate	10	ethnic minorities, human rights, the degree of violence
Privatisation frauds and inadequacy of appropriate sanctions; revision of the privatisation process as a "Yes" option", tacit agreement between the Government and the opposition	9	transparency of the institutions, reforms, the rule of law
Censorship of the extract on Prime Minister Sanader, related origin of PM Sanader's property as (not) discussed on the Latinica show, 14 February 2005	9	lack of freedom in the media

b) What is relevant to the advocacy of public support?

Although the choice of each case is primarily based on the frequency with which it occurs (to be found in the experts' answers) the Forum also took into consideration, in making its final decision, the factor of the campaigning orientation of the project, that is, the potential usefulness of these case studies in

encouraging public advocacy of societal openness in the ensuing period. This usefulness is related to the degree of interest that a particular subject may trigger in the public eye. Public advocacy would represent an attempt to influence important processes where a lack of societal openness is expressed, on one hand, and to emphasise the positive steps made towards the opening up of society, on the other hand.





c) A need to realise continuity in the observation of social themes related to the opening/closing of society.

An attempt has been made to ensure continuity in the observation of societal themes and phenomena related to the opening/closing of society: during the process of evaluation of the openness of society, each of the two chosen examples of social praxis served as a point of origin in defining the case study analysis unit within the context of three different, interrelated social phenomena that concern the following:

1. Marginalisation of Social Groups

(the accent here was put on the manifestation and process of marginalisation as well as on the opportunities for and obstructions to decreasing the degree of marginalisation of social groups. In consequence, the focus is placed on social groups that are of relevance to our understanding of the openness of society and on their interaction with civil institutions and public policies).

2. Openness or closedness of public institutions

(the accent was put on the manifestations of and the reasons for openness/closedness of institutions as well as on related opportunities for and obstructions to increasing openness. In consequence, the focus is placed on the structural base of societal openness and on the interaction of public institutions with social groups and public policies).

3. Openness of public policies

(the accent was put on the transparency of and the degree of participation achieved in the making and implementation of public policies. The most important thing in this case study is the political content, which is of relevance to our understanding of societal openness and which interacts, through public debate and other mediums, with social groups and societal institutions).

By preparing the case study within the parameters of the aforementioned categories, the potential insight into the specific nature of openness/closedness of society is consequently enriched, as well as the potential number of different bases for conducting case studies. Such a choice of categories for the case study is based on our understanding of societal openness and its key components, especially because it is possible, within the context of the three categories of the case study, to encompass all the criteria of societal openness: 1) inclusiveness/opportunity for participation; 2) access to information; 3) opportunity for, and effectiveness of, public criticism and debate; 4) capacity for change/innovation; 5) accountability.

On the basis of the described criteria, the following themes were chosen:

- The government, the public and the media display a higher degree of tolerance towards the Serb minority (a case study illustrating the processes of the opening of society).
- The influence exerted by the Catholic Church on sexual and reproductive rights, and on

health policy (a case study illustrating the closing of society.

An Outline of Methodological Aspects in the Process of Drafting Two Different Case Studies

Researchers used protocols in the drafting of these case studies. Protocols are essential methodological tools in the drafting of a case study: they resemble a miniature research blueprint. Each protocol contains specific instructions related to all the key steps taken in the drafting of the study: a definition of the specific goals of the study (diagnostic goal and action goal); definition of the unit of analysis or unit of the case; explanation of why a specific case has been selected; key questions; the choice of methods and data sources; guidelines for the interpretation and the structuring of the study; guidelines for the shaping of the conclusion and recommendations; suggestions for the publication and applicability of the case study; overview of the necessary resources (the profile of the investigator and his/her associates).

Three different protocols - relative to the type of phenomenon which the given case study aims to describe and analyse - were prepared to suit the purposes of this case study: The

position of marginalised groups; 2) the functioning of institutions; 3) the process of establishing or shaping public policy, with the stress being placed on the aspect of public debate. As part of this year's research, the analysis protocol of the marginalised groups' position was readapted and used in the drafting of the Serb minority case study, while the analysis protocol of the public policy process was used in the preparation for the drafting of the case study of the influence of the Catholic Church on sexual, health, and reproductive rights policy.

What is special about any case study is the variety of available research methods and procedures. In the two aforementioned studies, such qualitative methods as the document analysis, semi-structured individual and group interviews, and the observation of relevant events predominate. Moreover, the existing research results arrived at through the employment of quantitative methods were also either used or further interpreted. The following data sources are key sources to both of this year's case studies:

- official reports and documents belonging to various institutions (the Republic of Croatia Statistical Bureau, Public Prosecutor's Office, Croatian Helsinki Committee, narrowly specialised organisations, etc.)
- various associations and institutions' web pages and forums (Croatian Bishop's Conference, Ministry of Science, Education, and Sports, Informative Catholic Agency, Women's Network, and others)
- media writings (Jutarnji List, Glas Koncila, Identitet and other media)

- persons directly involved in the problematic of the cases: semi-structured interviews with ten persons involved in the case study of the influence of the Catholic Church in Croatia on politics as regards sexuality, reproductive health and the rights of sexual minorities (individual contacts); thirteen people in some way involved in the problem (or theme) of the position of the Serbian minority in Croatia (nine of them participated in a group interview; four of them were interviewed individually).
- the results of other relevant research studies
- professional literature

The triangulation of data sources was achieved by coordinated management of the sources.

In this context it is important to mention that the specific nature of the case study of the position of marginalised groups, in this case the Serbian minority, was marked by the direct involvement of the members of that group, not only as respondents, but also as participants in the process of interpretation, whereby it was possible to enhance both the degree of “polyphony” in the study and the intersubjective nature of the process of communication within the context of these research studies.

Finally, it should be noted that the existence of three different comprehensive, elaborate protocols has created a basis for the future drafting of a whole array of case studies which would relate to the three types of societal phenomena - marginalised groups, institutions, and public policies. The fact that the said protocols are stable enhances the potential for comparing case studies within the context of a particular type of societal phenomenon, which is especially important given that the degree of comparability of case studies is in principle limited. The project has the intention of enriching the heretofore modest body of documentation on the subject of these modern societal processes which are related to the opening/closing of society and which are manifested in concrete, temporally limited cases. Such an approach enables us to enhance the consistency of the methodology or protocols in the preparation of case studies. The research study should thereby be conducted with less strain, which, given the fact that this project is both long term and of an applied nature, is extremely important.

¹ Yin, Robert K., *Case Study Research: Design and Methods*, London: Sage Publications, 2003.

² Kasapović, Mirjana, “Zagrebačka politička kriza 1995.-1997.: Sukob demokratskih i autoritarnih vrijednosti. Studija slučaja.”, in: Kasapović, Mirjana, Ivan Šiber and Nenad Zakošek, *Birači i demokracija*, Zagreb: Alinea, 1998.







Interpretation of results

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Minorities

Davor Gjenero

Democracy is usually defined as a system of rule of the majority, which, at the same time, ensures the protection of minorities. This definition includes the protection of temporary “political”, but also of “permanent”, minorities. Minority groups who are unable to become a majority in society by forming coalitions, and whose position cannot be changed through classical mechanisms of liberal democracy - by forming coalitions or through the results of elections - enjoy special protection in consolidated democracies and open societies.

Open society and minority rights

The rights of national minorities were also protected in previous centuries through bilateral agreements between the state where the minority lived, and the state to which the minority belonged. The

issue of minority protection as part of international law was declaratively resolved through the right to “humanitarian intervention” by the state to which the minority belonged

in the case where the fundamental rights of the minority were threatened. This principle was often abused by certain countries to achieve their geopolitical interests.

The establishment of the League of Nations led to the formation of what is known as a minority system. Along with the dissolution of three large empires and the formation of new nation states after World War I, “pockets” of ethnic, linguistic or religious minorities were formed, which had justified reason to fear that the new order would cause a threat to their fundamental rights. For this reason, the major victorious Allied Powers requested that the newly formed states conclude agreements on the protection of ethnic, linguistic and religious minorities. The first signed agreement was that between the Allied Powers and Poland, signed in 1919. Subsequently, the minority system of the League of Nations fell apart, together with the organisation itself.

It was only after World War II that human rights became, in the true sense of the word, part of international law, and that the protection of minority rights was no longer treated as a bilateral issue of the state in which the minority lived and the state of its people, or as a “geopolitical issue”, but became part of a complex of human rights

Democracy is usually defined as a system of rule of the majority, which, at the same time, ensures the protection of minorities.

In order to build an open society, it is necessary to create a system that protects minority rights as collective human rights, that defines the manner of exercising them, and that builds mechanisms to protect them.

protection. Minority rights, being collective rights, belong to the third generation of human rights. Human rights of the first generation consist of all civil and political rights; second-generation rights are economic, social and cultural rights; third-generation rights are the right to development, the right to peace, the right to a healthy and sustainable environment, the right to use the results of common human heritage and the right to communication. First-generation rights relate to the protection of the individual and are emphasised “against” the state. Their protection is possible both at national and at international level. Second-generation rights enable the individual to request something from the state, and may only be exercised at national level. Third-generation rights are defined in such a way that they cannot be efficiently determined (either “against the state”, or from the state), or efficiently exercised. Therefore, in order to build an open society, it is necessary to create a system that protects minority rights as collective human rights, that defines the manner of exercising them, and that builds mechanisms to protect them.

Development of the legal infrastructure for the protection of minorities in Croatia

Since Croatia is a plural society, the building of minority protection is exceptionally important. The level of political culture, the type of political mentality where all social power belongs to the majority, ignorance of the principle of rule of law, as well as inadequate legal security, affect minority groups most of all, especially permanent ones. The creation of a minority protection mechanism for Croatia was thus a precondition for international recognition imposed by the “Badinter Commission”. At that time, minority rights were defined for the first time as part of the complex of human rights protection, and, pursuant to international advice, the Croatian Parliament, on 15 December 1991, adopted the Constitutional Act on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities. However, after a substantial part of this Constitutional Act was abrogated by a Parliament decision in 1995, and since a great part of the provisions were never in fact applied (for

example, the right of members of national minorities to representation, or proportional representation, in bodies of local and regional self-government) until 13 December 2002, when (partially to meet the obligation arising from the Stabilisation and Association Agreement of Croatia with the EU) the Constitutional Act on the Rights of National Minorities was adopted, Croatia did not have a comprehensive legal infrastructure to protect national minority rights.

Therefore, it is not surprising that the surveyed experts in the protection of minorities consider the area of law as certainly the most important area for evaluating the openness of society and that they give this area the same significance as legal experts, and more significance than experts in other areas.

**Table 1 - Importance of individual areas;
assessment of experts in individual areas**

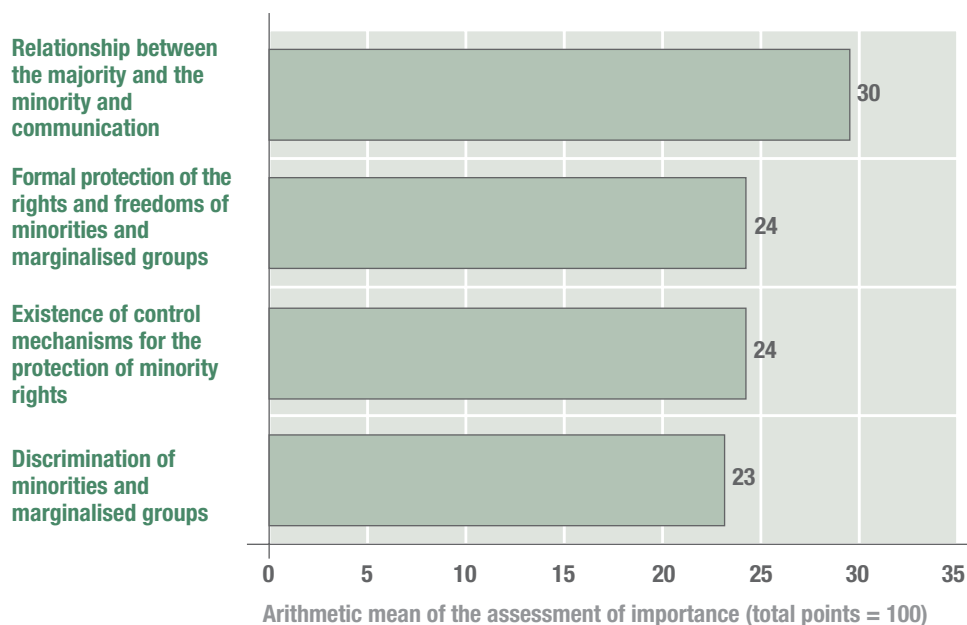
		(1) politics	(2) minorities	(3) law	(4) education	(5) economy	(6) media
(1)politics	Arithm. mean	17	16	21	17	13	17
	Median	18	15	20	15	15	15
	St. error	,952	1,203	1,276	1,252	1,459	1,543
	St. deviation	3,298	4,166	4,420	4,338	5,054	5,345
	Minimum	10	10	15	10	0	10
	Maximum	20	25	30	25	20	30
	n	12	12	12	12	12	12

		(1) politics	(2) minorities	(3) law	(4) education	(5) the economy	(6) the media
(2) minorities	Arithm. mean	17	18	26	14	10	17
	Median	17	18	20	10	10	15
	St. error	1,074	1,004	2,236	1,307	,666	1,150
	St. deviation	5,880	5,497	12,250	7,158	3,650	6,301
	Minimum	5	10	10	5	5	9
	Maximum	30	30	51	40	17	40
	n	30	30	30	30	30	30
(3) legal	Arithm. mean	13	13	26	19	13	15
	Median	12,50	12,50	25	20	12,50	15
	St. error	1,667	1,667	1,537	2,386	1,118	2,236
	St. deviation	4,082	4,082	3,764	5,845	2,739	5,477
	Minimum	10	10	20	10	10	5
	Maximum	20	20	30	25	15	20
	n	6	6	6	6	6	6
(4) education	Arithm. mean	16	13	25	20	12	15
	Median	19	,836	1,429	,986	,736	,871
	St. error	1,667	1,667	1,537	2,386	1,118	2,236

		(1) politics	(2) minorities	(3) law	(4) education	(5) the economy	(6) the media
	St. deviation	5,143	4,403	7,287	5,027	3,752	4,439
	Minimum	10	5	15	10	5	10
	Maximum	30	20	50	30	20	25
	n	26	26	26	26	26	26
(5) economy	Arithm. mean	17	12	24	17	18	13
	Median	18	10	25	18	18	13
	St. error	1,422	1,441	1,280	1,573	1,424	1,209
	St. deviation	6,197	6,281	5,581	6,858	6,205	5,269
	Minimum	5	5	10	5	7	5
	Maximum	30	30	30	30	30	20
	n	19	19	19	19	19	19
(6) media	Aritm. sredina	20	15	23	15	10	18
	Median	20	15	20	15	10	19
	St. error	1,522	1,255	2,435	1,369	,941	1,594
	St. deviation	6,276	5,175	10,038	5,644	3,881	6,571
	Minimum	10	5	5	5	5	5
	Maximum	30	25	50	30	15	30
	n	17	17	17	17	17	17

However, by adopting the Constitutional Act and on its implementation (by forming bodies of local and regional self-government in conformity with the exercise of the right to representation/proportional representation, by founding the Council for National Minorities, and by establishing state institutions dealing with the protection of minorities, in conformity with the Constitutional Act) conditions were created where experts in minority issues no longer considered the issue of formal protection of the rights and freedoms of minorities and marginalised social groups as the most important indicator for assessing the openness of society when dealing with the complex of minority issues. Considerably greater importance was given to the relationship of the majority towards the minority and to the fairness of public communication than to the issue of formal protection of rights. The existence of control mechanisms for the protection of the rights of minorities and marginalised groups is regarded as important as the formal protection system, and the issue of discrimination of minorities and marginalised groups only slightly less important.

Figure 1 - Importance of all indicators



Formal legal protection, then, ceases to be the key problem of minority protection, and the focus of interest moves to issues connected to the relation between the majority and the minority, issues of communication between groups, and the building of efficient social mechanisms of control and regulation.

Besides this, the evaluation of experts shows that in the area of formal protection of the rights of minorities and marginalised social groups there is a significantly smaller difference between the assessed importance of an individual issue and the assessment of the state of affairs than in other areas, and primarily in the relation of the majority towards minorities and marginalised groups. Formal legal protection, then, ceases to be the key problem of minority protection, and the focus of interest moves to issues connected to the relation between the majority and the minority, issues of communication between groups, and the building of efficient social mechanisms of control and regulation.

Experts assess most highly the current condition when they deal with indicators such as the one that all national minorities have the right to activities guaranteed by the Constitution and by law, through which they express their specific cultural characteristics, which signifies the formal protection of human rights. They give the lowest grades to the condition relating to issues of the reaction of local authorities to the violation of the rights of national minorities (an issue related to supervisory mechanisms) and in the event of discriminatory attitudes of state officials which are not sanctioned in any way (an issue

of discrimination). According to the opinions of the surveyed experts, the worst condition is established in the case of the (lack of) inclusion of the state in campaigns whose aim is to raise public awareness about minority problems, the (lack of) sensitivity of the public to the discrimination of sexual minorities, and particularly in the large social distance between members of the majority population and the Roma.

Formal protection of minorities and marginalised social groups

Under international supervision (the UN, the Badinter Commission, OSCE, the Venice Commission, the EU, obligations arising from the SAA) Croatia has developed quite an admirable system of protection of national minorities. From the evaluation of the surveyed experts it is very clear that the formal protection of the rights of members of national minorities is no longer a central problem. This is not only shown by the assessment of the importance of the complex of formal minority protection, but also by the fact that the formal rights of national minorities were evaluated

The Constitutional Act was adopted through the procedure necessary for the adoption of organic laws. This fact alone strongly guarantees the stability of the legal regulation of minority rights.

as best, and when speaking of formal legal protection, according to their assessment, things are worst in the case of the protection of the formal rights of sexual minorities. The lowest assessment was given to the accessibility of infrastructural support provided by the state to associations and activities of sexual minorities, and the inclusion of members of sexual minorities in decision making when their rights are at stake.

The Croatian system of protection of national minorities, although not fully legally consistent, has certain values which make it admirable. However, there are more legal inconsistencies when we speak about the relation between the Constitution and the Constitutional Act on the Rights of National Minorities. The most important inconsistency of the constitutional model is the fact that although the Constitution provides for the passing of only two constitutional acts - one on the Constitutional Court, and one on the implementation of the Constitution - there are two additional acts (besides the Constitutional Act on the Rights of National Minorities, there is also the Constitutional Act on Cooperation with ICTY). Even though the drafters of the Constitution did not foresee this, which is an indicator that the constitutional-legal solution of the problems

of national minorities is primarily a consequence of international pressure, and not a reflection of the “intrinsic” political need to resolve an important segment of internal politics, the Constitutional Act was adopted through the procedure necessary for the adoption of organic laws. This fact alone strongly guarantees the stability of the legal regulation of minority rights.

Another inconsistency in the Croatian constitutional-legal regulation of minority rights is the fact that the Constitution, in its Preamble, lists the national minorities which are recognised as having the status of “autochthonous” national minorities: “the Republic of Croatia is established as the national state of the Croatian nation and the state of the members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others who are its citizens, and who are guaranteed equality with citizens of Croatian nationality and the realisation of national rights in accordance with the democratic norms of the United Nations Organisation and the countries of the free world.” The Constitutional Act, however, when dealing with the rights of national minorities, does not mention “autochthonousness”, which is in any case

The issue of constitutional and legal protection of the guaranteed rights to perform activities thorough which the members of national minorities express their specific characteristics is considered by the experts as the best solution, not just when dealing with the formal legal protection of minorities, but with minority protection in general.

a disputable term in the literature dealing with the protection of minority rights.

Most modern states adopt the principle of “autochthonousness” and allocate specific minority rights only to the minorities explicitly listed in the specific document (Constitution, law), and only the minority which is situated in a defined territory (not the territory of the entire state) is considered to be autochthonous, and only if this is a homogeneous territory, settled through at least three generations, and if its presence is not the consequence of economic migrations. The Croatian Constitutional Act on the Rights of National Minorities, however, does not derive the right to specific minority protection from its being listed in a legal document.

Article 5 of the Constitutional Act gives the following definition of national minority: “A national minority in the sense of this Constitutional Act, is a group of Croatian citizens whose members traditionally inhabit the territory of the Republic of Croatia, its members having ethnic, linguistic, cultural and/or religious characteristics different from

other citizens and are led by the wish to preserve these characteristics”. According to this definition, each group of Croatian citizens which meets these conditions may exercise their rights as a national minority, regardless of whether in the Preamble of the Constitution they are mentioned as an “autochthonous” minority. In this way, through the Constitutional Act, the legislator recognises minority rights in a significantly broader sense than was the intention of the drafters of the basic constitutional document. This social advancement is a clear indicator of the achieved increase in the openness of society. Consequently, the issue of constitutional and legal protection of the guaranteed rights to perform activities thorough which the members of national minorities express their specific characteristics is considered by the experts as the best solution, not just when dealing with the formal legal protection of minorities, but with minority protection in general (average grade 4.73). It is precisely for this reason that experts in minority issues, unlike some politicians who are members of minorities, do not stress the issue of the Preamble to the Constitution and the minorities listed therein as a significant problem when exercising minority rights.

Minority rights, as collective rights, are

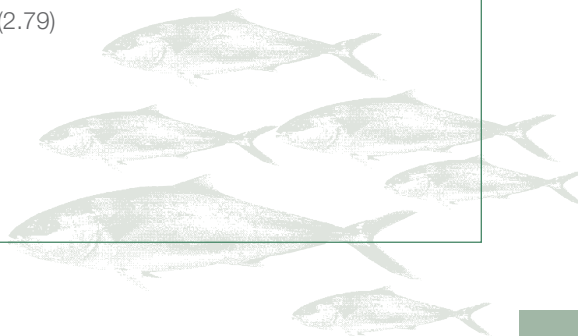
Experts consider the legally guaranteed representation of members of national minorities in bodies of local self-government in regions with a larger share of national minorities as one of the best solutions to the problem of formal minority protection.

exercised first of all at local and regional levels. The task of the national legislation is to ensure the principle of the rule of law and equality before the law, and national minorities exercise their interests primarily in the areas where they live. The right to representation and proportional representation of national minority members in bodies of local and regional self-government had not been resolved until the adoption of the Constitutional Act on the Rights of National Minorities, or of the Act on the Amendments to the Act on the Election of Members of Representative Bodies of Units of Local and Regional Self-Government on 14 March 2003. When evaluating the current situation of the protection of minority rights, experts consider the legally guaranteed representation of members of national minorities in bodies of local self-government in regions with a larger share of national minorities as one of the best solutions to the problem of formal minority protection (average grade 4.07).

When dealing with the formal protection of the rights and freedoms of minorities and marginalised groups, experts evaluate highly the legal regulations which ensure the equality of women (average grade 4.53) and the legal guarantee of the equality of all religious communities, and the free expression of

religious beliefs (average grade 4.37).

The equality-based relationship of all religious communities with the state was graded much lower (3.17). Unlike the legal protection of the rights of national minorities and the formal equality of women, which the experts assess as relatively good, the legal regulation of the position of sexual minorities was graded significantly lower (average grade of 3.17). In fact, the legal infrastructure is the least weak element of formal protection of marginalised social groups (which can, for example, also be observed in the fact that the availability of infrastructural state support to sexual minorities has been assessed as far worse than the formal legal regulation of protection and equality. Therefore, experts assess the actual efforts invested for the inclusion of persons with disabilities into all aspects of social life significantly lower than the formal legal equality of marginalised groups (average grade 2.97), as well as the efforts to remove physical barriers for people with disabilities (2.9) or the concrete will of the political authorities also to promote and protect the rights and freedoms of minorities (2.79)



Experts assess that the members of national minorities, although exposed to a discriminatory relation, are relatively more protected in their career promotion in state institutions then when employed and promoted in general.

Discrimination of minorities and marginalised groups

Article 14 of the Constitution is the first to prohibit discrimination in the chapter dealing with the protection of human rights and fundamental freedoms. “Everyone in the Republic of Croatia shall enjoy all rights and freedoms, regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics. All shall be equal before the law”.

Although discrimination on racial, national, religious, gender or other bases is prohibited by the Constitution, experts assess the actual situation in dealing with the issue of preventing the discrimination of minorities and marginalised groups as significantly worse than the formal protection of minority rights. The discrimination of women in career promotion and employment, and the discrimination of persons culturally determined as a minority in becoming equally involved in all aspects of social life is the least prominent (both are given an average grade of 3.17). According to this assessment, the

dependence of social mobility on gender is one of the less prominent discriminatory aspects compared to marginalised groups in modern Croatian society (average grade 3.07).

Experts assess that the members of national minorities, although exposed to a discriminatory relation, are relatively more protected in their career promotion in state institutions (grade 2.77) then when employed and promoted in general (2.63). Such an assessment is probably the reflection of the controversy that exists in the constitutional-legal, or legislative infrastructure on the protection of minority rights. The Constitutional Act, as an instructive regulation, mentions the positive discrimination of members of national minorities related to employment in bodies of the state administration, in the justice system and the administrative apparatus of local self government, in those areas where the minority makes up a significant part of the population. However, while in these areas (where the minority makes up more than 15% of the total population) the issue of proportional representation of minority members in representative bodies and bodies that conduct executive tasks of local and regional self government is regulated by the Act on

Local and Regional Self-Government, or by the Act on the Election of Bodies of Local and Regional Self-Government, laws and subordinate regulations which relate to employment in public services (education or health care), bodies of state administration (police, regional services of central authorities) or the justice system do not regulate this instructive constitutional-legal provision. Since the Constitutional Act cannot be directly applied, it is not possible to implement measures against the discrimination of minority members in employment, not even in the state administration.

The principle of the rule of law is the main principle for the organisation of an open society, and legal protection is the basic precondition for achieving a non-discriminatory relation towards individuals and groups. For this reason, experts also assess as exceptionally important the impartiality of the judiciary in proceedings which involve minority members (6.97), but also the value of trust in the justice system, in other words, the confidence of national minority members that they will not be discriminated against in court (6.86). However, the assessment of the actual situation is significantly different from the assessment of the importance of these two values. The real

impartiality of courts in proceedings in which members of national minorities appear as parties in the dispute is assessed by the

surveyed experts with a somewhat higher grade (2.57) than the confidence of national minority members that they will not be discriminated against before courts on the basis of their nationality (2.27). Therefore, the mistrust of the members of national minorities in the mechanisms of the rule of law and in equality before the law is even greater than the actual discriminatory practice of the justice system.

Such a lack of trust in judicial institutions leads to the situation where members of minorities often do not even try to exercise their legal rights, but reconcile themselves with, and accept, the discriminatory practice shown by other public authority bodies. The conviction that the discriminatory attitudes of state officials will not be sanctioned (the probability of being dismissed for this reason is assessed with the extremely low grade of 1.63 by the surveyed experts) also contributes to this picture of the acceptance of this discriminatory practice by minorities or

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marginalised groups.

Balanced and sustainable regional social development is one of the three pillars of the European Union, and the problem of balanced social development is one of its most serious structural problems. Although EU accession is proclaimed as the most important political goal of nearly all the political parties in Croatia, the issue of equal and balanced social development has not been stressed as an important developmental and social issue in political discourse. One dimension of the imbalanced social development of Croatia is related to its policy towards national minorities. Although an attempt has been made, especially from the position of authority, to interpret this imbalanced social development solely as a consequence of the war, the fact is that it is particularly the areas inhabited by a high percentage of members of national minorities that lag behind most in terms of social development. The care taken by the state to contribute to the equal development of parts of the country where a large number of members of national minorities are settled is assessed by the surveyed experts with an average grade of 2.47. They also consider that equal social development is exceptionally important for the building of an open society (6.73).

The surveyed experts assess that the inequality of women is more prominent in the family than in society in general (non-discrimination in employment is graded with 3.17; in social mobility with 3.07; and non-discriminatory practice in the family with 2.57). People with disabilities are exposed to a high degree of discrimination in employment, and the discriminatory position of homosexual persons is the most prominent when compared to all minorities or marginalised groups.

The Existence of control mechanisms for the protection of the rights of minorities and marginalised groups

Although Croatia, to a large extent following international pressure, has mainly successfully resolved the issue of the formal-legal protection of national minorities, notwithstanding the fact that the legal protection of marginalised social groups has remained largely unresolved, the basic problem that arises is the question of building supervisory mechanisms for the protection

Civil society organisations are less well organised in terms of protection of the equality of persons with disabilities. The general public is significantly less sensitive than civil society to minority issues.

of minority rights. When evaluating the situation in some segments of the protection of minorities, experts in the protection of minority rights give the lowest grade to the condition of control institutions (an average of 2.7, while the average grade of formal protection is 3.8). This weak assessment is made worse by the fact that the experts gave a relatively good assessment to the functioning of civil society when dealing with the relationship towards minorities. The existence and activity of civil society organisations that deal with the protection of the national and religious rights of minorities is assessed with an average grade of 4.4, and the activity of organisations dealing with gender equality is assessed even higher - with 4.67. Civil society organisations are less well organised in terms of protection of the equality of persons with disabilities. The general public is significantly less sensitive than civil society to minority issues.

The promptness of public reaction to cases of the violation of the rights and freedoms of national minorities was assessed with an average grade of 2.93, the same as compliance to laws guaranteeing the protection of the rights and freedoms of national minorities.

From the weak assessment of the situation,

in terms of the implementation of the law (compared to the relatively well-assessed sphere of formal protection), we may conclude that civil society is much more responsive and sensitive to the issue of protecting the rights of national minorities than are the institutions of the state in general. The readiness and capacity of the government to ensure that all minorities enjoy their guaranteed rights in all parts of the country was assessed much lower (average grade 2.63). This case, where the exercise of minority rights is conditioned by the territory, is perhaps most obvious in the case of the Serbian minority community exercising their rights.

Four different (geopolitically conditioned) groups can be discerned in this minority, with completely different opportunities in exercising their rights. The Serbs from the Danube region were granted their rights on the basis of the Erdut Agreement and the process of peaceful reintegration. In fact, the minority there lives ghettoised, and parallel institutions have been built (from kindergartens to secondary schools, in terms of education) for the two national communities. The minority

Civil society is much more responsive and sensitive to the issue of protecting the rights of national minorities than are the institutions of the state in general.

The relationship of the majority towards the minority is considered by the experts in minority protection issues as the most important question for assessing the openness of Croatian society.

is carrying the burden of difficult economic circumstances, but is not socially excluded. Serb returnees in areas where they used to form a majority before the war, that is, in areas that were defined as the districts of Knin and Glina in the first Constitutional Act, formally enjoy the rights laid down by the Constitutional Act, but are actually completely socially isolated, they have no chance of finding a job, and no mechanisms of positive discrimination are applied to them. In large urban communities, Serbs are mainly dispersed and are gradually being nationally assimilated. Serbs arriving as refugees in areas which had a mixed population before the war and which are not passive and isolated as the major part of the former districts of Knin and Glina, find themselves in the most difficult position. There, as for example in the hinterland of Zadar, the strongest pressure is made to prevent their return, and state intervention is usually missing. Due to this situation, the experts gave the worst marks to the promptness and efficiency of response of the state apparatus (primarily the police) in preventing the violation of minority rights and freedoms (an average of 2.2) and the readiness of local authorities to react in cases of violation of national minority rights (the weakest grade: 2.03).

The relationship of the majority towards the minority and fairness of public communication

The relationship of the majority towards the minority is considered by the experts in minority protection issues as the most important question for assessing the openness of Croatian society. The assessment of the situation in this area is significantly better than in the issue of the construction of supervisory mechanisms of minority protection, and is at the level of the average grade of minority protection in general (grade 3.0).

In terms of the relationship of the majority towards the minority, experts assess that the greatest advance in the opening of Croatian society was made in this segment. The indicator of the progress made in the opening up of society is often seen in the increase of the level of tolerance of the authorities, the public and the media towards the Serbs and some other minority communities. In terms of progress, indications of the establishment of political responsibility are more often stressed than the increase of tolerance towards marginalised groups.

The average grade for the relationship of the media towards minorities is somewhat better than the assessment of the overall protection of minorities.

The average grade for the relationship of the media towards minorities is somewhat better than the assessment of the overall protection of minorities. Not instigating hate against the members of minorities in the media was assessed with the average grade of 3.03. The relationship towards women in terms of protection against proclamations of hate was assessed with a significantly higher grade, 3.73, and experts assess that members of sexual minorities are protected against instigations of discrimination by the media (2.7). Progress over the preceding period can also be felt in terms of differentiating between instigating and tolerating discrimination and proclamations of hate, the former of which encourages “concrete” acts against minorities or marginalised groups. National minorities today are also more protected from proclamations of hate in the media (3.27) than is the case with members of sexual minorities (3.03).

The public has recently been significantly more sensitive to issues of discrimination. In this sense, sensitivity for issues regarding the discrimination of women are assessed with the highest grade (3.33), whereas sensitivity to the discrimination of persons with disabilities is given a somewhat lower grade (3.13), sensitivity to the discrimination of

national minorities is significantly lower (2.60), while the public is least sensitive to the discrimination of sexual minorities.

Social distance towards the Roma minority is worrying and has been assessed with the lowest grade among all the mentioned indicators. The detachment of the majority in relation to members of national minorities in general is significantly lower (2.87), and an important indicator is that the social distance of the majority from the Serbs, who used to be the national minority that was most exposed to proclamations of hate and political discrimination, is now nearly at the level of that towards other national minorities (2.47).

According to the experts' assessment, the “caution” of the members of the majority towards sexual minorities is significantly higher than the social distance towards national minorities. Experts give a grade of 2.4 to the benevolence of the majority towards establishing connections between the minority and the state to which it belongs, and a grade of 2.6 to the readiness of members of the majority to become involved in the activities of national minority

National minorities today are also more protected from proclamations of hate in the media than is the case with members of sexual minorities.

organisations, which is a clear indicator of the integration of the minority into society. Experts assess the present readiness of the state to become involved in campaigns which aim at raising public awareness of minority problems as even worse than the relation of the general public towards national minorities (the average grade is only 2.07). The sensitivity of the public to instances of discrimination of members of sexual minorities is assessed extremely low by experts, who give it a mark of only 2.03.

Conclusion

In dealing with the evaluation of the openness of society, the segment related to the protection of minorities was assessed by experts as best, with an average grade of 3.0. It was precisely in the segment of the protection of minority rights that experts also recently observed a relatively large number of positive indications of progress in the opening of society (91 out of a total of 408; only in the area of progress in the public and the media were there more positive indicators: 140).

The fact that the issue of the protection of minorities and marginalised groups is in the focus of expert interest is also evident because at the same time the largest number of negative indicators of an open society, or of a closed society, was observed in the area of the protection of the rights of minorities and marginalised groups. Experts observed as many as 92 negative phenomena.

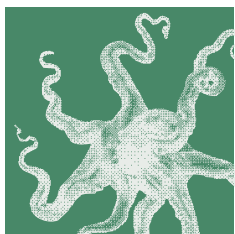
The issue of the protection of national minorities, which was assessed as the worst in the previous period when assessing the functioning of democratic institutions and the consolidation of the democratic order, is now becoming less of a problem. The issue of the protection of marginalised social groups has fared much worse.

In the previous period, the focus of interest was on building a legal infrastructure for the protection of minorities by the Constitutional Act on the Rights of National Minorities. Through the adoption of this Act and the conducting of additional elections for local self-government, thus establishing representation/proportional representation of national minority members in representative bodies and executive bodies of local and regional self-government, the system of formal protection of minority rights has been nearly completed. However, the issue of

implementing the instructive regulation on the positive discrimination of members of national minorities in employment in bodies of state administration, administration of local self-government, public services and the judicial system still remains unresolved. Neither public sensitivity nor sensitivity from the legislator may be observed in this issue, nor is there a feeling of sufficient engagement of NGOs representing minority rights and of political parties which represent minorities in the exercise of this right through laws and regulations.

Although the focus of expert interest is in the relationship of the public towards minority rights and their protection, the fundamental problem, when dealing with the exercise of minority rights, is the poor operation of control and protection mechanisms, or even the lack of such mechanisms at all. The greatest improvement in the development of minority protection has been achieved in terms of the public, primarily the media, first in limiting the space for proclamations of hate, and then, in the gradual growth of public awareness of minority issues. The positive processes and progress achieved should be consolidated in the future to become a strong trend rather than merely sporadic hints. The greatest problem of civil society still resides in how to

strengthen the mechanisms of minority rights protection. While the NGO sector is relatively strong in dealing not only with the protection of the rights of national minorities but also with marginalised groups, the general public, and especially political circles, do not have a feeling for the importance of building protection mechanisms, nor a readiness to offer any prompt or efficient response in the event of the violation of the rights of the members of minorities and marginalised groups. What is particularly worrying is the belief in the inefficiency of the justice system, as a control mechanism, and in the lack of impartiality in trials involving members of minorities. The problem becomes additionally complex through the high level of mistrust that members of minorities have in the neutrality of the justice system.



Media

Zrinjka Peruško

The position and role of the media in the political and public life of the community is an important indicator of the state of the openness of society. The opportunities for free discussions on any topic, important both in the individual and in the collective life of citizens and society, are essential for making quality decisions, not only in the normative democratic and media domains, but also in the everyday experiences of citizens. Openness of public discussion, which is in modern and complex societies carried through and with the help of the media, is necessary for ensuring normal social change and development in a democratic society. This makes it possible for decisions to be taken on the basis of known information and argumentation, and to change those decisions which no longer serve the common cause and which are not the wish of the citizens. Openness of the media system is closely linked to its pluralism and diversity, which presupposes that different groups and diverse and opposing ideas may participate in the media and the public sphere.

As we have defined *open society* as a civil society where all citizens can take part in the social sphere and participate in the public sphere, and where they can freely discuss any topic, it is clear that the role of the media

is transversal, i.e. broader than an analysis of a single area of societal activity. On the other hand, the role of the media is only one part of the aggregate evaluation of the communicative openness of society, and therefore elements of this important segment are also found in other areas of this research project.

This study has shown that the glass of media openness in Croatia is half-full (or half-empty, if you wish). There is positive movement, but with it, some unresolved problems have been identified.

Methodological digression for a better understanding of the accomplishment of this analysis and the data on which it is based

The analysis of media openness is based on three types of empirical data:

- *The first group of data is based on experts' opinions collected by means of a*

The openness of society in the area of media is defined according to five basic criteria/areas: independence and autonomy of the media, media professionalism, openness of the media market (absence of monopolies), openness of media programmes and editorial policies, legislation in the media system, and effectiveness of civil society institutions.

questionnaire, and which represent answers to closed-type questions, where the experts had to rank the importance of a certain area for media openness, and to rank the extent of its application/presence in Croatia. Based on this part of the opinions of experts (21) who responded to this survey, in this report we can construct an ideal model of openness of society in the aspect of media in Croatia.

- *The second part of the expert data is of a qualitative type and pertains to answers to the open questions on possible activities by which media openness in Croatia could be improved, and on the potential leaders or protagonists of those activities.*
- *The third group of data comes from a public opinion poll, where, in the dimension of media, the goal was to record the understanding and readiness of citizens for media openness.*

On the basis of these three groups of empirical data, we can obtain an insight into how media experts in Croatia perceive an ideal system of media openness, how they evaluate the situation in Croatia with respect to that ideal model, how Croatian citizens understand media openness, and what their opinions are on the subject. Considering that this study in the dimension of media was conducted on a relatively small number of expert subjects, the results and the interpretation are preliminary, indicative and

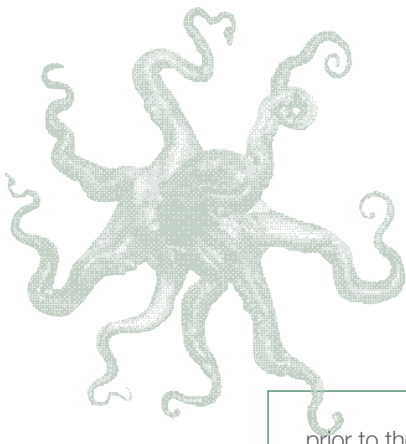
encourage further systematic research on the subject matter in Croatia and in the world.

The initial definition of media openness: the meanings and the explanation of criteria for the dimension of media

The openness of society in the area of media is defined according to five basic criteria: independence and autonomy of the media, media professionalism, openness of the media market (absence of monopolies), openness of media programmes and editorial policies, legislation in the media system, and effectiveness of civil society institutions.

Each of these criteria embraces not only the treatment of the media and the media system by the state, but also the role of civil society and the media itself in the development of openness or closure.

In the last decade, the question of *media independence* has been one of the key questions for the building of a democratic media system in Croatia. As in other new democracies of Central and Eastern Europe,



prior to the democratic transition, the media systems (mostly, except for some alternative media) were part of the sphere of the state, and not society, especially not civil society. As we have initially defined transition as a process of conquering civil society, in this context the attaining of independence of the media in the past was primarily connected with independence from the state and politics. This independence is reflected in the absence of political or state/political party influences on the editorial policies of the media, particularly those of the major press and public television media. Media independence today is gaining even wider significance than political significance, and the question of the owner's (non-permitted) influence on media editorial policies is ever more present as a threat to achieving independence. Naturally, the possibility of complete independence of media institutions from other institutional centres of power in society, mainly economic, is disputable. For that reason, *media professionalism*, understood as being respectful of the basic ethical norms of the journalist's profession to publish and announce objective information in an impartial and rational way, is an essential element in the construction of a model of media openness and in the assessment of media openness. In today's European societies affected by globalisation (Croatia included), the power of the media is, or is becoming, stronger than political power. That

is why the importance of media responsibilities is becoming ever greater. These responsibilities include the journalists' and editors' ability to make assessments, and also relate to their level of education, as well as their lack of conformism to political or economic authorities.

Global trends in media concentration are reducing the number of owners of global media corporations which control all types of media from sound carriers to the television picture, books or radio programmes. Apart from distribution, these companies control (through stocks or different kinds of ownership or supervision) both production and pre-production in the media industries. On the global level, a frequently-raised question is how to offer protection from a different kind of dependence, that of (over)powerful media corporations. Therefore, in order to analyse *media openness*, it is important to analyse the openness of the media market, the possibility for new players to enter that market, and the absence of monopolies. In fact, a monopoly causes a closing up, especially in the media system in which a variety of forms of ownership and control are prerequisites for the idea of pluralism (which is in fact openness). *Media openness*, in terms of its programmes and content, means openness to ideas that are different, to a richness of views and political options, to minority groups (in all forms, from ethnic to sexual), to social

groups with specific needs, to civil society and its organisations. This criterion shows the readiness of the media to open up to societal pluralism, which is undoubtedly a characteristic of every modern democracy and developed civil society. *The effectiveness of civil society* in the sphere of media is also incorporated in the criteria that reflect the openness of the media system. The criteria for media openness reflect programme openness, an ear for what is different and diverse, and the way in which the media are approached. The criteria for civil society effectiveness refer to the influence of organised civil society on social reality (in the sense of influencing media legislation), the freedom to organise and the freedom to act (journalists' unions in all the media), and the possibility for civil society to control and influence the media itself (as is the case in HRT- Croatian public radio and television).

While the above-mentioned criteria reflect the current situation of openness of society and media, legislative criteria deal more with the openness of the state/political sphere and the quality of legislative solutions in the media system. In a democratic society, the state has the duty to provide a legislative frame to ensure the undisturbed functioning of the media, to ensure and guarantee their independence, to protect the openness of

the media market, and ensure protection for the journalists in carrying out their professional tasks. Therefore, indicators in the area of media legislation include transparency in making decisions that affect the media (including those of public legislative bodies related to the procedures of obtaining radio and television licences), the quality of applicable laws, the openness of the state/political sphere to the influence exerted by the professional public in the construction of a legislative framework, and the quality of jurisprudence in claims made against the media and reporters.

Each criterion is operationalised through a given number of indicators in the form of questions (from 3 for civil society to 21 for media openness). For each criterion, one question was devoted to the assessment of importance and the empirical state of social awareness of the criterion. In other words, although legal acts are the bases that regulate the system, the relationship of state/politics/owner is important, while media activity itself is necessary for openness; it is the social climate or public opinion on a certain issue that can sometimes be of crucial importance in determining the direction of societal development. In this sense, when dealing with the openness of the media, without serious public support of tolerance,

pluralism and non-violence in public dialogues, etc., it is difficult to expect significant progress in these areas. Naturally, a crucial point in this situation is the relation between the social climate/public opinion and the media and others who define the public agenda (primarily the political sphere, and in the ideal type it is the civil society that participates). To date, who has primary influence over whom in this story has not yet been scientifically proven, but it is obvious that there is a positive correlation between the social climate and the media agenda.

The importance of media for societal openness

According to the opinion of all the experts surveyed, the rule of law is the most important dimension for the openness of society, while economic freedoms and entrepreneurship was labelled as the least important. The media and media freedom are positioned in fourth place on the scale of importance for the openness of society, immediately after transparency and the democratic quality of political processes and education, while the freedoms and rights of marginalised social groups and the economy were ranked after

the media. The differences between these four areas are insignificant, so it would be inappropriate to conclude that the media are not given a fair share of importance.¹ It is characteristic (and expected) that experts mostly evaluated their area as more important, that is, they gave their area more importance for openness on the whole than their area was evaluated in the entire research. Within the field of media and media freedom, experts had relatively different evaluations; in fact, the deviation in the evaluation of the importance of the media system is the greatest when compared to all other areas.²

Croatian citizens see media freedom as even less important for complete openness, and they place it in fifth position; the media was better placed only than minority rights. The results show that 57% of the population believe that media freedom is extremely important for the overall openness of society. (For example, the most important is the quality of an educational system that is equally accessible to all, and 72% find this to be extremely important; next is democratic political decision-making, followed by the rule of law, economic freedom; last is minority rights, which 39% of the subjects find extremely important).

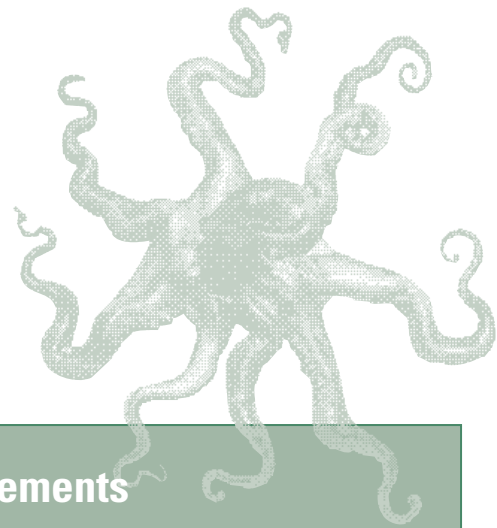


Table 1 - Degree of agreement with statements

	I do not agree at all	Generally, I do not agree	DO NOT AGREE	AGREE	I mostly agree	I completely agree
Some media in Croatia should be banned.	37,50 %	17,00 %	54,50 %	23,80 %	11,90 %	11,90 %
A state commission should be established to oversee that the media does not make public something that may be against the interest of the state.	32,90 %	17,30 %	50,20 %	28,50 %	13,50 %	15,00 %
Public, national television should not take a critical view on the most sacred cause in our society, such as the War for Independence.	24,50 %	16,10 %	40,60 %	35,40 %	14,90 %	20,50 %
It is good that all major social groups can express their views and problems through the media.	3,00 %	3,40 %	6,40 %	74,70 %	36,00 %	38,70 %
It should be possible for all social groups, including homosexuals or Jehovah's witnesses, to express their views and standpoints about various social issues	18,10 %	12,80 %	30,90 %	40,80 %	21,60 %	19,20 %

It is evident in the respondents' answers to questions relating to openness and freedom of the media that there is a large percentage of those who think that it is right for all significant social groups to be able to appear in the media. The percentage of those who would allow the same for marginal or minority groups is much smaller. Citizens are mostly against the idea of banning media, or having the state control the media, although 28.5% agree that the media should not publicise anything that may be against the interests of the state. This tells us that there is a considerable percentage of citizens who still do not accept the idea of an open society. However, these results are only indicative. To analyse the public's standpoint on these issues, more detailed research of public opinion would have to be conducted.

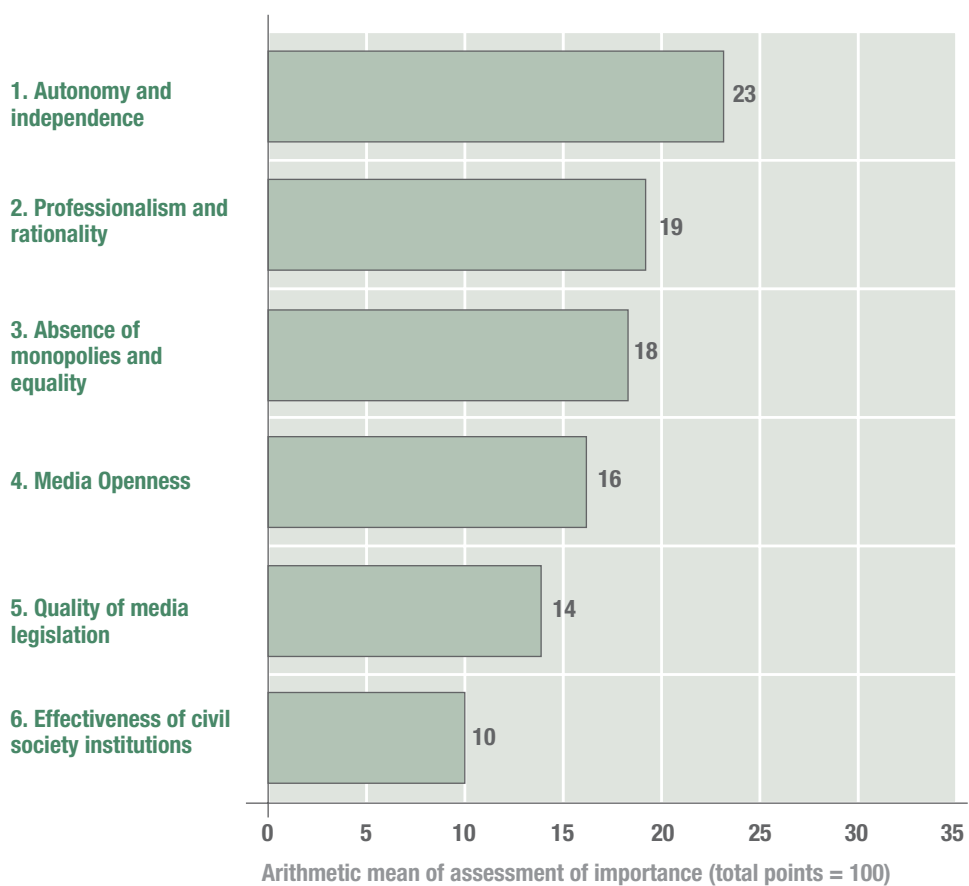
The open media model

By constructing criteria for the individual dimension of social activity, which are included in the analysis of societal openness, we have also actually suggested elements of an ideal openness of society as well as an ideal

openness of each individual dimension. Based on the experts' assessments, we can draw conclusions on the importance of each individual dimension and criterion for societal openness and for the openness of the specific dimension.

What is most important for media system openness is media autonomy and its independence from political and economic interests, professionalism and media rationality, and openness of the media market, that is, the absence of monopolies. In assessing the importance of these criteria for media system openness, the assessments by experts are in accord, that is, there is very little deviation among experts, so we can conclude that among the professional community there is a high degree of consensus that these three criteria are very important for media openness. Following these, the most important is programme and editorial autonomy, followed by the quality of media legislation. Civil society efficiency is considered the least important among the suggested criteria that define openness of the media system. In the last three criteria, deviations in assessments of experts are somewhat greater, which shows that among them there are more of those who give greater importance to the role of civil society institutions for media openness, or to the quality of media legislation.³

Figure 1 - The importance of all indicators of media openness



Although the results of this study, which was conducted for the first time, are only indicative and may merely indicate trends, we can nevertheless engage in a kind of interpretation of our view of an ideal type of media openness in Croatia. The most important criterion for media openness in Croatia is believed to be independence of the media from political and economic interests, including the independence of the main print media and that of public and commercial television stations. Naturally, the possibility for media independence is directly linked to the advancement of political democratisation, because media independence from the political system depends firstly on political will, and only then on the will of the media. The second group comprises criteria that deal with the media themselves. This suggests that the media (including their professional organisations and associations, such as Hrvatsko novinarsko društvo (the Croatian Journalists' Society) and Sindikat novinara Hrvatske (the Croatian Journalists Union), are a key factor in achieving media openness. The significance given to media professionalism in Croatia, in combination with independence which is ranked first, could be interpreted in two ways. Firstly, as progress from the time when we expected that legislative acts themselves would

satisfactorily shape the media system (including objective reporting, readiness to publish answers, including thoughts/ideas coming from the other side, etc.). Secondly, as a warning signal that the long-sought independence and professionalism in the media and are still not present (this will be discussed in detail in the analysis of the state of media openness).

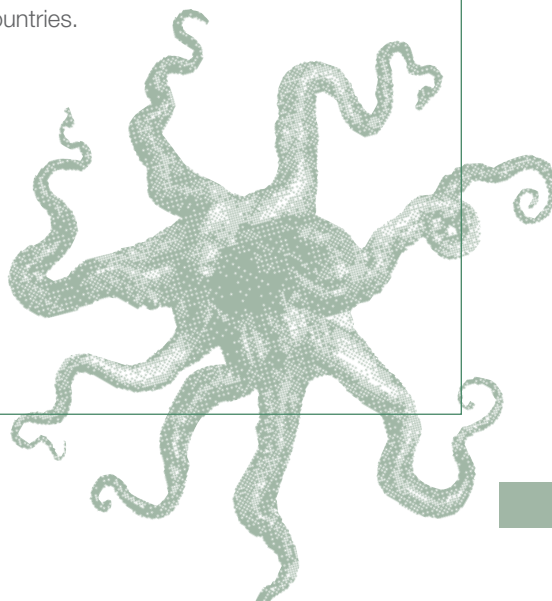
Questions relating to the diversity and pluralism of media in the evaluation of importance fall somewhere in the middle. According to the experts' evaluations, the openness of editorial policies, openness of the media market and the absence of monopolies are very close to one another in terms of their significance. Based on these results, we might assume that in the future greater significance might be given to these two criteria, which is to say the question of media independence and media professionalism will be less problematic. In this way, increasing importance will be given to the criteria of pluralism and media diversity (which directly reflect openness for different participants in the media system and for various ideas that are discussed openly).

The last group comprises the quality of media legislation and the effectiveness of civil society institutions. In terms of interpretation, it is

quite difficult to analyse these two criteria. In assessing importance, we can assume that there is awareness that the quality of legislation is a necessary condition for an open media system, although this is not enough in itself. In interpreting the lowest position of importance, the effectiveness of civil society (although the differences on the scale from 1-7 are very small, i.e., the importance of civil society has an average rank of 6.23, and the autonomy and media freedom 6.3), we should take into consideration the very high evaluation of the social climate (6.38), i.e., how much the general public really cares about the effectiveness of civil society institutions in relation to the media. Experts assume that the public should place great importance on the issue concerning how successful civil society organisations in the media are.

The results of the experts' evaluations for the area of media point to the importance of individual criteria for media openness, and show the importance of indicators for each criterion. The indicators, which, for the purposes of the study, were established as statements that the respondents had to rank on a scale from 1 to 7, 1 being the least important, and 7 the most important, also show society's expectations of the media

that actually exist in Croatia.⁴ Consideration of these results reveals, for example, that in Croatia it is not particularly important for commercial television channels and the most influential political weeklies to be independent of political or economic interests, and that it is not expected of them to pay more attention to issues concerning the equality of ethnic or sexual minorities or gender equality.⁵ How much attention editors of commercial television pay to the work of civil society institutions is also considered as somewhat less important. It is safe to conclude that much greater participation in societal openness (we could relate that to the social responsibility of the media) is expected from public television and the daily print media, while commercial television and weeklies are allowed to stay in the sphere of entertainment. It would be interesting to compare these expectations/values with those of other countries.



The state of media openness in Croatia

What we can conclude on the basis of the data obtained is as follows. On one hand, there is the experts' understanding of the ideal type of media system openness (which, by the nature of things, is related to the empirical situation, meaning that only by repeating this research in other countries will it be seen whether the criteria for media openness will rank similarly). On the other hand, there are the experts' assessments of the compatibility of the Croatian situation with the desired ideal state.⁶

Considering, however, that this study was conducted for the first time, it is difficult to generalise on the comparative success in achieving media openness in Croatia.

In evaluating the state of media system openness in Croatia, the total mark for individual criteria ranges from 3 to 3.6 (on a scale from 1 to 7, where 1 represents not present at all in Croatia, to 7 which represents widely present in Croatia). The best average mark was given to the quality of legislation in the media system, followed by media

autonomy and independence, while professionalism and rationality share the same grade (3.2). Also sharing the same mark with each other are openness of the media market, absence of monopolies and the effectiveness of civil society institutions (3). However, we are talking about average marks, while deviations from the average are relatively high, i.e. consensus among the experts about the assessment of the state of media openness is quite low (as opposed to relatively high concordance in the assessment of the importance of certain criteria we discussed earlier). These data show that although there is significant agreement about the expectation of the role of media and its contribution to societal openness, there is no consensus in the evaluation of the state of media openness and media freedom. We find the highest disagreement in the question of media market openness and the (non)existence of monopolies, where differences in assessment are as much as 54%, the highest of all criteria in the entire study. Generally, in the field of media, the degree of consensus on the evaluation of the present situation is lower than in other areas of the study.

Within some criteria, the average marks were mostly between 2 and 5. The lowest marks (between 2.0 and 2.9) were given to the

independence of political weeklies and dailies covering economic interest groups, the development of investigative journalism, the readiness of the weeklies to publish reactions on the same page and in the same location as the original text. Equally low marks were given to the coverage by the media of minority groups, or their equality, and of civil society and its activities. Furthermore, the independence of press distribution chains was given a low mark, and in relation to other indicators of openness, the quality and effectiveness of independent institutions in charge of market competition and the readiness of executive power to engage in preventing media monopolies and preserving equality in market competitions received a grade below 3.⁷ In the legislation package, the lowest marks were given to the possibility to obtain licences for radio or television broadcasting without a political lobby, and to the quality of court practice in claims against journalists, and the quality of the criminal code in articles relevant to media freedom. It is also indicative that there still exists a tendency for the executive branch to put pressure on the political media (the average mark for this item is 4).

Experts gave best marks to HND (the Croatian Journalists' Society), whose independence

was marked with the highest average grade in the entire media sample (5.41), followed by the political independence of the largest journalists' union (grade 5.18). HND's economic independence, or its independence from other interests, received marks from 4 to 4.9, and the independence of Croatian radio television from certain economic or interest groups (its political independence) is marked with 3.71, the political independence of commercial television stations, as well as the impartiality concerning election campaigns, received marks above a solid four. Objectiveness and professionalism in reporting news programmes by public television is also marked highly (4.12). The general state of media freedom also received a relatively high mark of 3.88.

In combining the assessment of importance and the assessment of the state of affairs of individual criteria for media openness, a preliminary impression is gained about what is important in Croatia for the openness of the media system, and which elements function better, and which do not function so well. It appears that some of the prerequisites for an open society are present to a certain degree. The activities of professional journalists' associations (the society and the union) and their political and

economic independence are at the very top of the positively realised indicators. This is followed by the objectiveness, professionalism and economic and political independence of the public HRT (Croatian radio and television). Considering the problems that HRT had with independent and professional journalism in the 1990s, this represents a significant move forward. Since, in European frameworks, the role of public television in ensuring pluralism and diversity of media content, programmes and ideas is one of the basic factors of balance in increasingly commercialised media systems, such a result may offer positive expectations for the development of a truly open media system in Croatia.

The general state of media freedom and the Media Act and the Electronic Media Act are also among the first ten indicators within the cross section of assessment of importance and openness. This, however, does not mean that experts consider further improvement of these areas unnecessary.

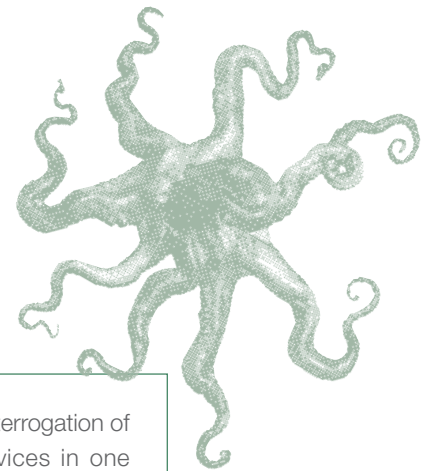
Similarly, experts have marked highly the importance of the realisation of independence and autonomy of the media as an asset in the public sphere. There is no doubt that serious improvement in overall social

development cannot be expected before the values of an open society become part of widely accepted social values. In the area of media openness, it is precisely this independence and autonomy that were assessed as values already existing in the public (and that is confirmed by the public opinion poll), while some other values (for instance, the need for effective action by civil society, or market competition in the media system) were poorly marked.

Conclusions and recommendations

The last group of data to be analysed are examples of open and closed societies identified by experts, and their recommendations for the improvement of the present state of media openness.

In the examples of openness and closedness, experts were not limited to the analysis of their own areas, but also responded to questions pertaining to other areas as well. We observe that amongst the most frequent answers in questionnaires and from experts from non-media related areas are



those about the growing influence and the high-quality engagement of the public, associations and the media. The higher tolerance shown by the government, the public, and the media towards Serbs, the Roma, and other ethnic minorities or marginalised groups is viewed as a positive trend, but media reports on the minorities is nevertheless considered inadequate. This kind of evaluation can be linked to public expectations of the media (experts' views), where expectations are higher than what is actually the case.

The positive role of the media is also repeatedly mentioned in respect of disclosing and reporting scandals, which have political consequences, and therefore Government sensitivity to public opinion is positively valued in this respect. In the same manner, Minister Žužul's resignation is repeatedly mentioned, as well as the public and media support for Helena Puljiz in the case of her being interrogated by POA (Counter-Intelligence Agency), the pre-empted direct deal with Bechtel, etc. The active opinion of the media in political cases and the increased political independence of journalists, disclosure of cases of corruption are also mentioned as positive examples, in other words as openness of the media and public

spheres. The treatment and interrogation of journalists by the secret services in one government after another are identified as a negative example or as an indicator of a closed society. In this, as in the other examples mentioned, the distinction between the public/media sphere and the state/political arena is evident, so that in many cases the negative moves of the government, which are assessed as working against an open society, are reflected in a positive light in the public sphere in terms of open criticism and information presented by the media.

Comments repeatedly show a positive evaluation of HRT's openness and its greater independence from the government and politics, and therefore indicate a higher quality in reporting. Its independence in reporting the election campaign is seen as an indicator of opening, and in particular public resistance to pressures on the editorial policy (examples are *Dnevnik* (The Main News at 7.30), and *Zlikavci* (a cartoon)). A negative mark was given for removing the feature on Prime Minister Sanader's acquisition of wealth from the show *Latinica* in February 2005.

The public debate on the opinion of the Croatian Bishop Conference on human reproduction was mentioned as an example of openness, which experts consider as a

sign of a strengthened public and also as a mark of the influence of public debate on politics. However, the influence of the church on legislation in the same case was marked negatively as an example of a closed society.

The influence of civil society organisations on politics is also seen to be greater, and therefore public debates are also assessed positively. Also mentioned is the progress in the prompt reaction by the government to the display of fascist and Nazi symbols (monuments), and predominant public opinion which is against proclamations of hate and the display of such symbols and monuments.

In the recommendations for the improvement of the present state, we can recognise several groups of topics or areas that experts have identified as important for the improvement of openness in the media system.

Recommendations and areas of improvement for media openness: professional media standards and improvement in the education of journalists and editors; expansion of the role of the civil society in media control in the sense of ensuring that the media serve the public interests; empowering the public through the education of citizens (from pupils and students to those who appear in the media, including politicians) about the way

in which the media and its legislature operate; reduction in monopolies in the print media; improvement in the transparency of owners in the media; completion of the privatisation process in the sphere of media (especially in local electronic media which are partially owned by local authorities); expansion of media responsibility to publish denials; abolishment of imprisonment for slander; improvement in the quality of the news and the entire media programme, and a reduction of yellow journalism and sensational journalism.

One area identified as important is the improvement of journalists' educational and professional standards, which would as a result bring editorial policies to a desired level of professionalism, objectivity and impartiality.

The professional norm should be supported as a goal and owners and politics should influence editorial policies of the media as little as possible. Transparent media ownership and control over trends in monopolies should add to the quality of the media programmes.

Generally, a higher and stronger role of civil society in the public sphere is expected through involvement in media programmes, but also through media supervision.

The role of media associations and organisations in the protection of freedom of speech and of the press includes strengthening the role of the Croatian journalists' society, while the idea of appointing

a media *ombudsman* is proposed once again.

The growing commercialisation of public television is assessed as negative, which prompts the need for a quality improvement in its programme for the purpose of becoming a public service and completing the transformation process from national to public

television.

The role of supervisory and regulatory bodies (the programme council of HRT, the Council for Electronic Media) in the domain of Croatian media should be strengthened and improved.

It should ensure quality, variety and pluralism of programmes, and should ensure the better representation of civil society.

¹ We could conclude that the highest mark for the rule of law and legislation is a sign that Croatia is still in a developmental stage, where both the rule of law and legislation are not inherently implied.

² The arithmetic mean of the assessment of media importance by media experts is 18.9, with a standard deviation of 6.441, which shows that experts had relatively different opinions on the importance of the media.

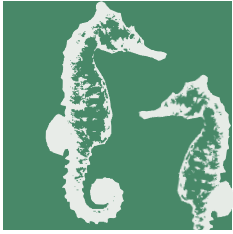
³ The variability of the evaluation of the importance of criteria for media openness ranges from 11% for professionalism and rationality of the media, 12% for absence of monopolies and market openness, 13% for autonomy and independence, 16% for media openness, 19% for the quality of media legislation, and 20% for civil society effectiveness. The higher the percentage, the higher the number of various opinions, that is, the compatibility of opinions is lower. The variability shown here pertains to answers to the question “estimate the importance of criteria for achieving ideal levels of society openness”, with 1 being the least important and 7 being the most important. The same question was asked for all of the above-mentioned criteria/areas.

⁴ Awareness of this, theoretically, builds on the Croatian “normative media theory”, i.e. the set of expectations and beliefs on the desired role of the media in society. See Z. Peruško Čulek, “Demokracija i mediji”, Zagreb: Barbat 1999, for the construction of normative media theories based on parliamentary discussion.

⁵ We must bear in mind that the differences in the ranking of importance are insignificant, that is, a difference of about one mark from other significant issues.

⁶ Is there an ideal state of affairs, and where? We cannot conclude that based on this study. According to various perceptions of media theory and various studies, no ideal open media system exists, and there are always topics which are not discussed in the media.

⁷ Unfortunately, the question did not include the names of the institutions, so we do not know whether the subjects were thinking of the Agency for the Protection of Market Competition or the Council for Electronic Media, or both



Education

Tomislav Rešković

Openness in education

There are several important assumptions in this part of the study.

The first assumption is that education is one of the generators of societal openness or lack of openness in two ways. On the one hand, the education system, as one of the social sectors, can be more or less open and can thus increase or decrease the openness

of society as a whole. Similarly, the education system has an impact on the degree of societal openness by promoting, to a greater or lesser

extent, the values of an open or closed society through the educational process, i.e. through the content of curricula and methods of work.

Every system of education designs its final product, education, at two levels. The content of the first level is of a completely pragmatic nature and relates to the usability and usefulness of education in other subsystems. In other words, in order for particular subsystems (such as the economy, health system, judiciary, trade and education itself)

and thereby the whole of society to function, it is necessary to have a certain number of people who can perform certain activities. The quality of the education system at this level is instrumental, i.e. identical to the usability of its product.

However, together with this pragmatic level, there is another level, of a completely different nature. In particular, each system of education promotes certain values on the basis of which young people are educated to function in society as a whole, but this time not as experts in a particular profession, but as members of the community. These values are not manifested solely in the contents of education, in the curriculum, but also in its methods and organisational forms.¹ The degree to which this level of education is different from the former one is seen most clearly in the nature of its criterion of quality. Here the criterion of quality has nothing to do with efficiency, but only with the values themselves, and the quality of the education system is no longer instrumental, but intrinsic. Put simply, at this level the system of education is as good as are the values it promotes.

This not only relates to indoctrination-based systems of education of authoritarian

Education is one of the generators of societal openness or lack of openness.

societies, but also to liberal democratic societies. "In liberal democracy the state undertakes to treat all its citizens as individuals and all individuals should be treated equally. However, in the developmental sense, human beings are never primarily free and equal individuals. Free and equal individuals, i.e. human beings that perceive themselves as such and act accordingly, are not found, they are created... Of course, public education in today's liberal democracies has other goals as well -primarily to create technical experts and qualified workers that the modern industrial economy needs. Still, the basic political task of public education in liberal and democratic regimes is the creation of citizens, the creation of persons who see themselves and others as free and equal individuals."²

The second assumption is that education itself can be open or closed. In other words, certain characteristics of the education system (goals, structure, curriculum, management method, etc.) determine, to a greater or lesser extent, the degree of openness of the education system itself.

Finally, the third assumption is that openness/lack of openness of education, as well as its capacity to generate societal openness/closure, can be identified in a certain way. Namely, this study attempts to

determine the degree of openness of education by determining to what extent the six basic criteria of openness are fulfilled by education. A set of indicators is related to each criterion, which determines the degree to which the education system fulfils a certain criterion.

The criteria of openness of education that the research uses are as follows:

1. Possibility of participation in education, i.e. openness of the system to involvement / participation.


This implies: a) the ability of the system, without discrimination, to provide education for all citizens, independently of their socioeconomic status, ethnic background, place of residence, health condition or type of educational needs; and b) the ability of the system to meet all educational needs, including specific/special ones.

2. Autonomy and efficiency. Autonomy is defined as the ability to manage educational institutions independently of political pressure, and as the professional freedom of teachers to implement the curricula.

Efficiency is the ability of the system to adequately and sufficiently a) meet the developmental needs of society; b) enable

Certain characteristics of the education system (goals, structure, curriculum, management method, etc.) determine, to a greater or lesser extent, the degree of openness of the education system itself.

Out of six selected areas which generate societal openness (rule of law, politics, education, media, minorities, economy), only rule of law was perceived as more important, whereas education shares the second/third position with politics.



and stimulate personal development (self-actualisation, creativity, freedom of expression); c) achieve the educational goals.

3. Control and legality. Control primarily refers to the control of the work of educational institutions and teachers, including the system of objective external evaluation and quality control as well as the ability of users (pupils/parents, students) to evaluate the quality of the service provided.

Legality implies adequate legislative regulation of the area and lawful activity of institutions, including the suppression of corruption.

4. Pluralism. Pluralism is defined as openness to difference. Pluralistic education implies: a) pluralism within the system, i.e. existence of various educational institutions and curricula, possibility to select schools, faculties and courses; b) a system which promotes pluralism, i.e. its curricula and methods promote understanding and tolerance of cultural, ethnic, sex/gender and physical differences.

5. Possibility and efficiency of public discussion / dialogue refers to:

a) readiness and ability of the education system to promote professional and laymen's public discussion on educational issues and possible solutions; b) readiness of educational institutions to participate in such discussions

by treating other participants as partners and to take into account the results of such discussions in the process of decision-making.

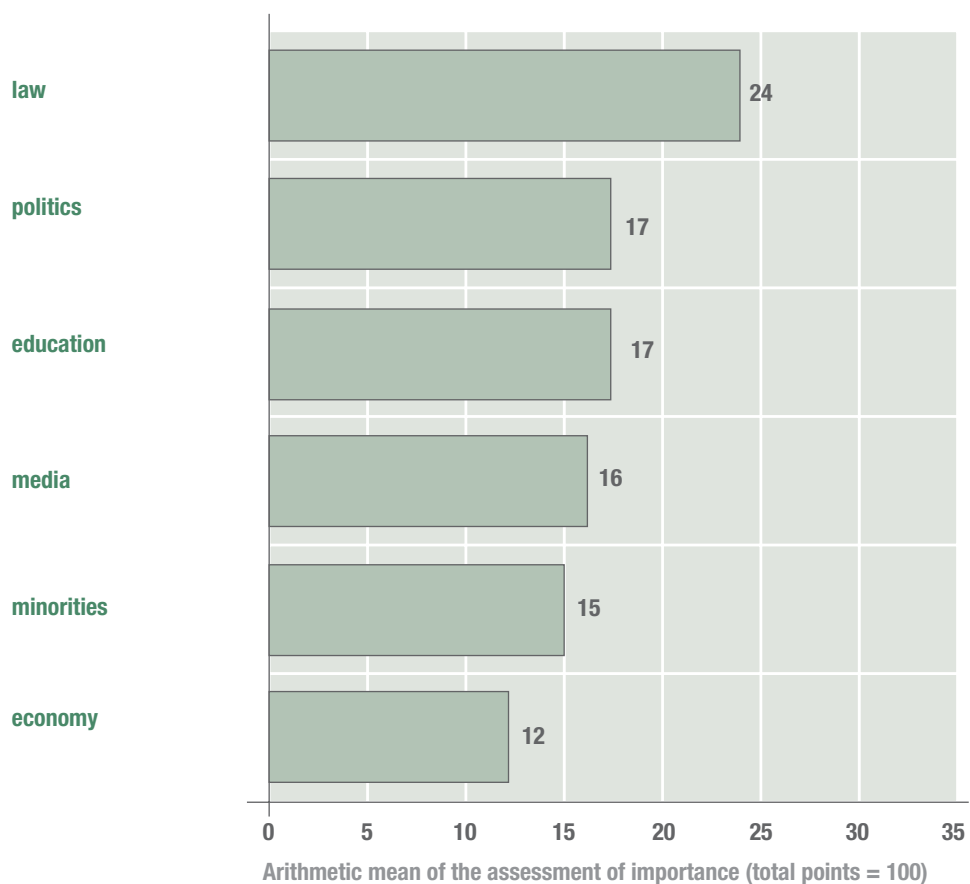
6. Transparency and availability of information.

Transparency implies primarily publicly transparent (visible) work methods and decision-making of state institutions, while the availability of information relates to the possibility of interested parties to obtain correct and relevant information on education.

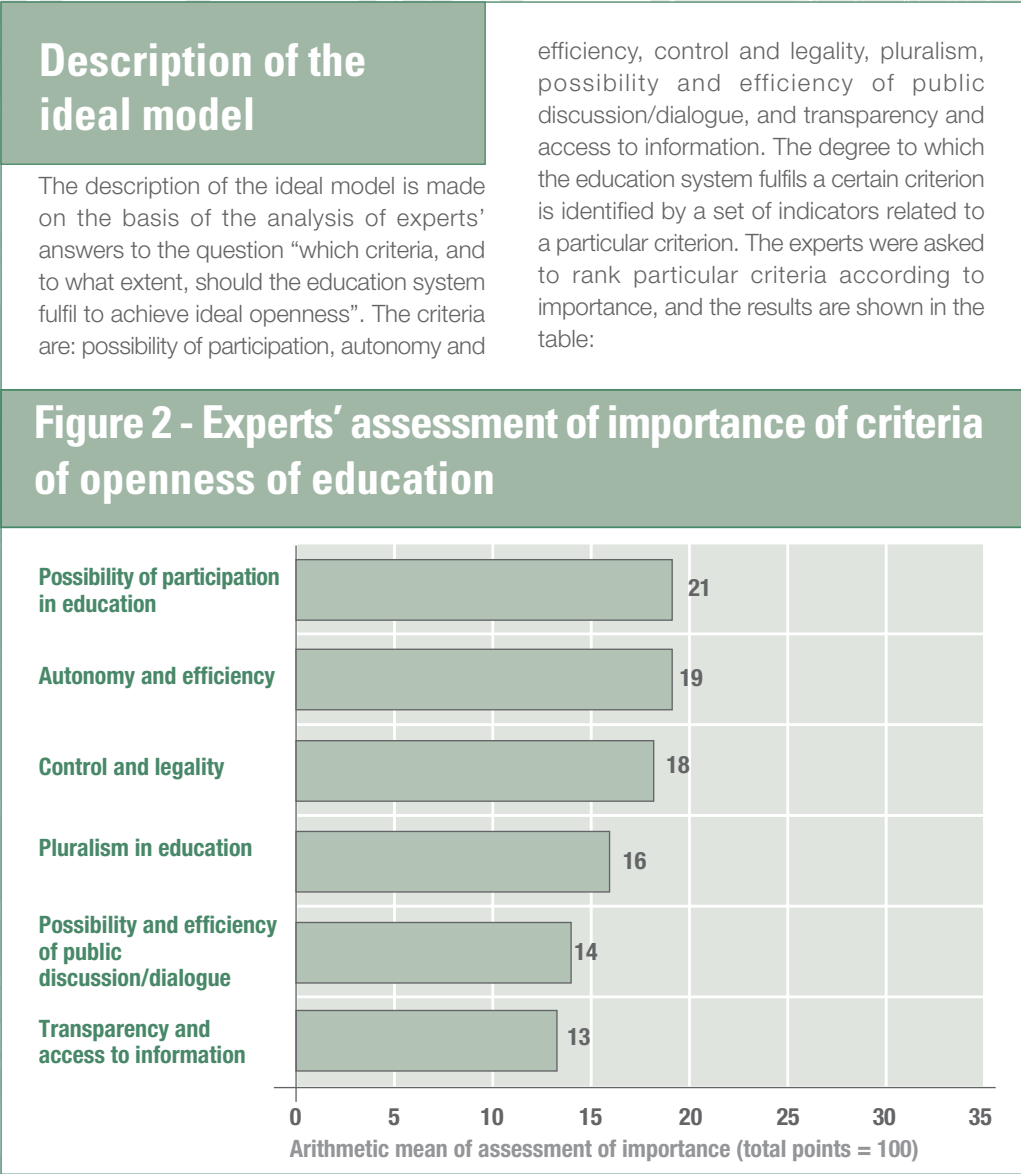
There are three key issues in this part of the study: which characteristics should the ideal education system have in relation to openness; to what extent, according to the opinions of the respondents-experts, is the Croatian education system actually open; and to what extent does the degree of the openness of education affect overall societal openness.


Regarding the final question, the results show that the importance of openness of education, according to experts' opinions, is extremely big. Out of six selected areas which generate societal openness (rule of law, politics, education, media, minorities, economy), only rule of law was perceived as more important, whereas education shares the second/third position with politics.

Figure 1 - Experts' assessment of the importance of the dimensions



The figure 2. shows that experts think that the possibility of participation is the most important criterion of openness of education.





The table shows that experts think that the possibility of participation is the most important criterion of openness of education. On the one hand, this means that education should be accessible to everyone, including persons with special needs, persons of lower socioeconomic status, members of national minorities and persons from distant and less developed regions. To put it differently, the education system should be designed and organised in a way that everyone can go to school, no matter if they are healthy or in a wheelchair, if they have or have not got money, if they live in the centre of Zagreb or in an isolated village in Lika, if they are Croatian, Hungarian or Roma by nationality. In this sense, the education system must provide equality in access to education.

On the other hand, the results of the study clearly show that access is a necessary but not sufficient requirement. It is not enough for education to be accessible to everyone, it is necessary that it should be able to meet the needs of various users to a similar extent. This means that the education system should be designed and organised so that it can equally educate a middle-class child of majority nationality with no developmental difficulties as well as a child with special needs, a blind child and a little Roma girl who

in the first class barely understands the language in which classes are taught.

in order to achieve openness, it is extremely important for primary education to be available to all citizens, no matter where their place of residence is (6.78)³. In addition, it is highly important for the system of education to be able to remove the lagging behind of children with unfavourable social status (6.59), for the whole pupil population to have equal educational conditions (6.52), for the system of education to provide relevant knowledge and experience to disabled persons with a view to their successful integration in life (6.48), and for school facilities to be physically adjusted to disabled children (6.33).

Autonomy and efficiency are ranked second on the scale of criteria. Autonomy in this context implies expert/professional autonomy of educational institutions in relation to politics in the areas of management, design and implementation of curricula. Efficiency of educational institutions and the system as a whole is their ability to achieve set goals. It is quite expected that autonomy was ranked high on the scale of criteria. The principle of professional autonomy, freedom in professional matters is extremely important

Efficiency of educational institutions and the system as a whole is their ability to achieve set goals.

Legality here implies the regulation of the education system by adequate laws and the functioning of institutions in compliance with these laws.

because it allows the search for truth and free discussion. This principle similarly reduces the possibility of transformation of education into indoctrination, which is a sort of ideal for all closed, authoritarian societies, in which the system of education is nothing but a mechanism of reproduction of the governing ideology, which owes its dominance exclusively to political power.

However, what is relatively surprising⁴ is the experts' attitude in terms of the high level of correlation between the efficiency of the education system and its openness. Namely, it is not hard to conceive of a system of education whose efficiency would be relatively low and openness relatively high. Similarly, and perhaps even more easily, it would be possible to conceive⁵ of an education system of high efficiency but extremely low openness.

In any case, according to the results of the study, the ideal education system would imply autonomous universities (6.81), the high effect of education on the development of freedom of expression, self-actualisation and creativity (6.70), independence of management structures in educational institutions from the centres of political power (6.59), de-ideologisation of curricula (6.52), and the efficiency of educational institutions in the

implementation of fundamental educational goals (6.52).

The third criterion in importance is legality and control. Legality here implies the regulation of the education system by adequate laws and the functioning of institutions in compliance with these laws. As for control, to a lesser degree it refers to the control of the legality of work of educational institutions and to a greater degree to the quality control of educational institutions.

Therefore, the results of the study suggest that the ideal education system, in terms of legality, should primarily and efficiently suppress corruption in education (6.63) and enable changes to be made of bad and low quality regulations from the area of education (6.52).

The results which refer to the importance of quality control are very indicative. Respondents believe that it is highly important for the education system to have developed national parameters for assessing the quality of work of educational institutions (6.41), that in the procedures of official evaluation of the quality of work of the teaching staff relevant institutions should fully comply with the prescribed criteria of evaluation (6.37), and that students may evaluate the work of the

Pluralism is here defined as openness to difference and refers to the readiness of the education system to include different types of educational institutions, programmes and methods, thereby allowing users to have a choice, but also to raise awareness of cultural, ethnic, world-view and other differences, and stimulate tolerance for them.

professor and the quality of studies (6.44). The existence of a system of quality control, which will prove to be even more important in the part of the study which asks respondents to suggest the most important changes, is one of the key characteristics of the ideal education system.

The fourth criterion in importance is pluralism in education. Pluralism is here defined as openness to difference and refers to the readiness of the education system to include different types of educational institutions, programmes and methods, thereby allowing users to have a choice, but also to raise awareness of cultural, ethnic, world-view and other differences, and stimulate tolerance for them. Here, too, we can witness the dual influence of education on societal openness; by the mere pluralistic nature of the education system on the one hand, and by the contents and methods which promote openness to difference and tolerance on the other.

According to the respondents' opinions, the ideal education system should, in educational programmes and in the work of educational institutions, stimulate tolerance of all types of difference (6.78), by paying attention to sufficient representation in educational programmes of themes relating to sexual, physical (6.41), and cultural and ethnic (6.33)

differences. In addition to that, the education system itself should be pluralistic, allowing for different educational programmes and methods (6.41), and allowing students to choose educational contents to a satisfactory extent (6.37).

The fifth criterion is the possibility and efficiency of public discussion in the area of education. Here, we primarily mean professional public discussion, discussion in which all those who professionally deal with education participate: relevant state institutions, teachers, professional organisations, NGOs, etc. The efficiency of public discussion in this context means the possibility to exert influence, by way of public discussion, on decisions made by relevant state institutions.

So, in an ideal situation, teachers would have a possibility to initiate concrete changes in the education system (6.59). Similarly, there would be a high level of consultations of professional organisations and other organisations interested in the problems of education in the process of passing laws which regulate this sector (6.52), open dialogue between relevant state institutions

The public should have access to relevant information about educational programmes and about the educational results of the pupil population, while the Ministry of Science, Education and Sports should provide information from its own domain to all interested social subjects.

and interested professional organisations (6.41), while representatives of organisations of national minorities could participate in designing educational programmes for national minorities (6.33). In higher education, students would be able to initiate concrete changes for improving higher education (6.37).

2.6 The last and, according to the experts' opinions, the least important criterion is transparency and access to information. The education system will fulfil this criterion

primarily if there is a transparent system of control of work of educational institutions (6.59) and certification of textbooks (6.48). The public should have access to relevant information about educational programmes (6.56) and about the educational results of the pupil population (6.30), while the Ministry of Science, Education and Sports should provide

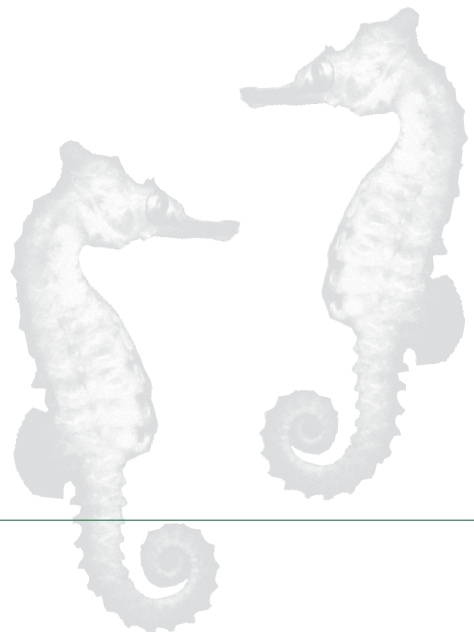
information from its own domain to all interested social subjects.

In brief, the ideal education system:

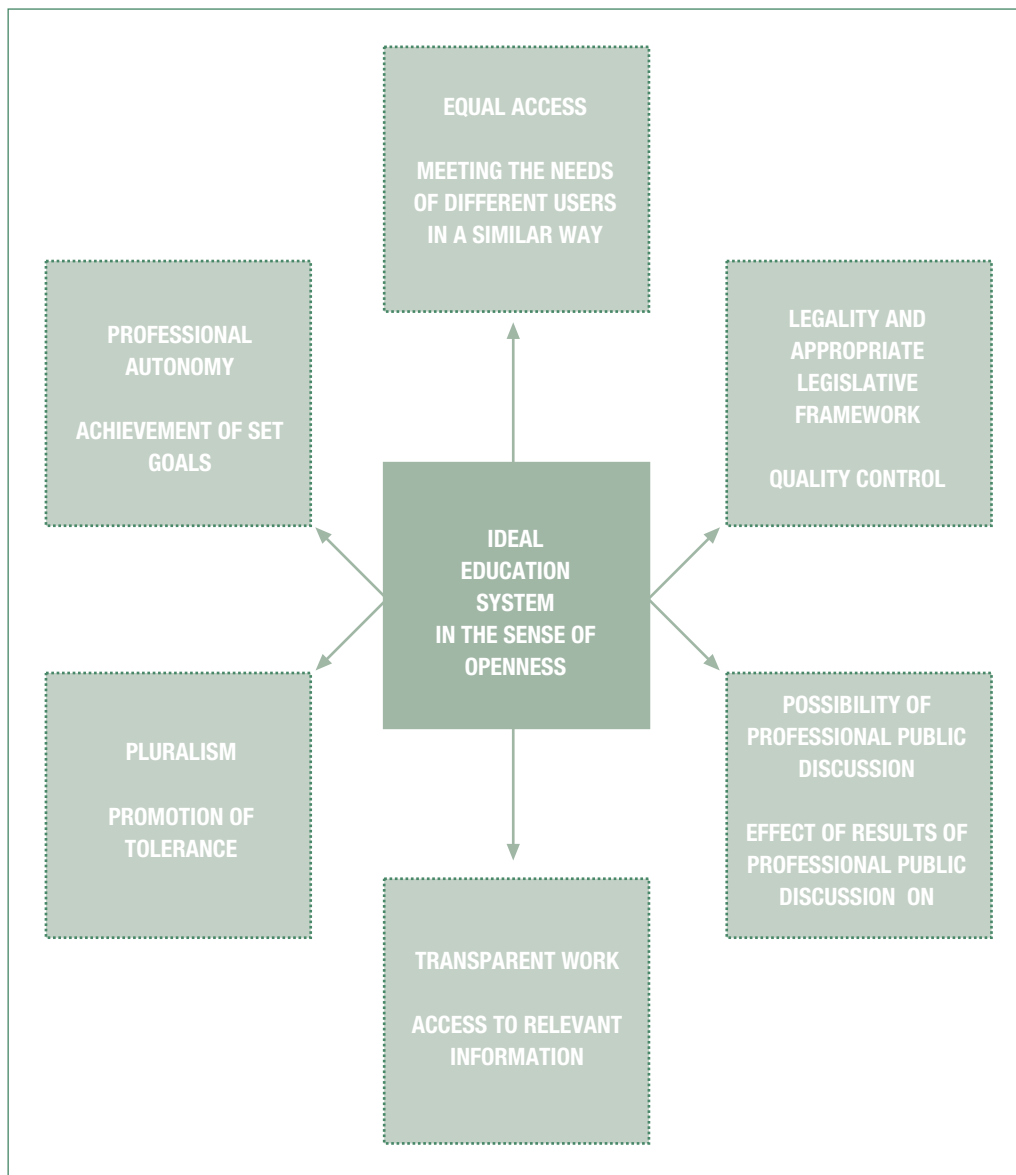
1. provides equality in access to education

and meets the needs of different users equally;

2. allows professional autonomy of educational institutions and to a satisfactory degree achieves set goals;
3. compels educational institutions to act lawfully, within the adequately regulated legislative framework, with an adequate system of quality control;
4. is open to difference, so that it is pluralistic in itself and that it promotes tolerance to difference;
5. enables professional public discussion and takes into account its results in decision-making;
6. makes decisions in a transparent way, by allowing access to relevant information on education to all interested parties.



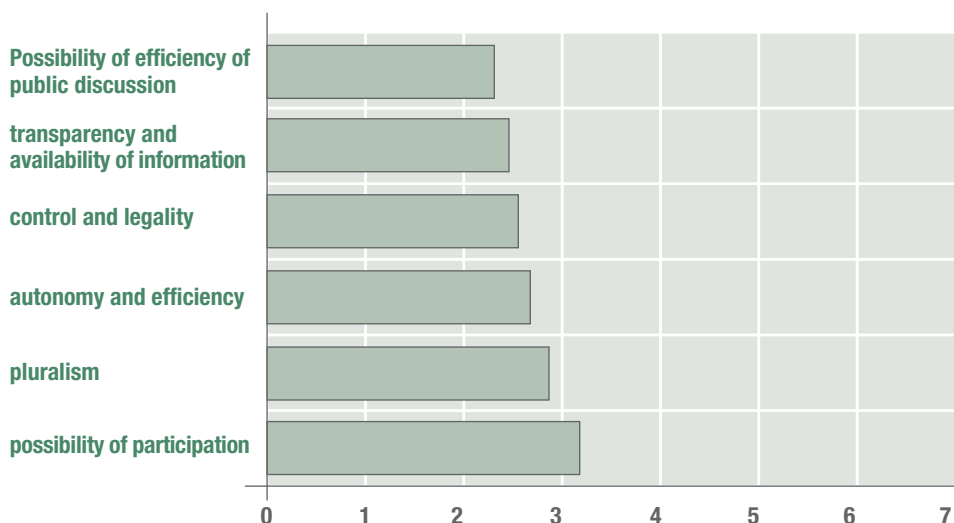
**Figure 3 - Ideal education system
in the sense of openness**



Evaluation of openness of education in Croatia

The evaluation of openness of the education system in Croatia was obtained by analysing experts' answers to the following question: "to what extent does the education system in Croatia fulfil specific criteria of openness?" The criteria of openness are: possibility of participation, autonomy and efficiency, control and legality, pluralism, possibility and efficiency of public discussion/dialogue, and transparency and access to information. The extent to which the education system fulfils a specific criterion is identified by a set of indicators related to a specific criterion, on a scale of 1-7, where 1 means the criterion was not fulfilled at all and 7 that it was fulfilled completely.

The extent to which a specific criterion was fulfilled is shown in the table below:



The criterion of possibility of participation in education is fulfilled to a greater degree than any other criterion.

According to the experts' opinion, the least fulfilled criteria are the possibility and efficiency of public discussion (2.39) and transparency and access to information (2.62), followed by control and legality (2.70), autonomy and efficiency (2.72) and pluralism (2.86), while the criterion of participation in education was fulfilled in the highest degree (3.10). Generally speaking, the degree to which certain criteria are fulfilled is in the range from 34% (transparency and availability of information) to 44% (possibility of participation).

The criterion of possibility of participation in education is fulfilled to a greater degree than any other criterion. However, even here the percentage to which this criterion is fulfilled is only 44% (3.10 on the scale from 1 to 7). This criterion, according to the experts' opinion, is also the most important one. Its importance is additionally highlighted if we take into consideration the fact that, from the last census, 40.37% of inhabitants older than 15 completed primary education, or even less than that⁶.

As for specific indicators within this group, we can observe an extremely weak presence of indicators which show the ability of the education system to provide adequate education to disabled persons and persons

with special needs: the physical adjustment of school facilities to disabled children is extremely poor (2.04), the capacity of the education system to ensure teaching instruments and aids to children with special needs is very low (2.58), just like its ability to provide relevant knowledge and experience to disabled persons, with a view for them to be able to achieve successful integration in life (2.96). In other words, the Croatian education system, to a certain extent, discriminates against disabled persons and persons with special needs since they are not able to exercise their right to education to the extent that the majority population does. Metaphorically speaking, this situation is analogous to the situation in which the first stair of the school entrance is 3 metres high, classrooms have no blackboards or chalk, and teachers teach first graders the alphabet by writing letters in the air with their finger, while teaching is done in one of the South Chinese dialects.

One of the key reasons for this situation, both at the normative (legislative) level and the practical one, lies in the fact that this problem

... we can observe an extremely weak presence of indicators which show the ability of the education system to provide adequate education to disabled persons and persons with special needs.

The availability of primary education to Roma children is very low, while the adjustment of primary education programmes to their needs is even lower.

is often solved in the humanitarian context and not in the context of human rights. Education of disabled children and children with special needs is not a matter of one's good will and should not be left to humanitarian activities of showbiz stars and newspaper tycoons. Instead, education should be perceived as their right and it should therefore be the object of unconditional state care.

The second evident problem, when it comes to possibility of participation in education, is the education of Roma children. The availability of primary education to Roma children is very low (2.74), while the adjustment of primary education programmes to their needs is even lower (2.15). It is estimated that "about one third of Roma children have never been included in any form of education".⁷ It is difficult to provide the exact percentage of Roma children who complete primary education, since the facts do not exist,⁸ but according to some estimates it could be between 25 and 30% (while the national average is 98%). If, apart from that, we bear in mind the fact that a relatively high number of Roma children attend schools in segregated classes⁹ in which the quality of teaching is significantly lower, it is clear how the Croatian education system, when it comes to participation of the Roma,

is highly exclusivist.

However, the ability of the education system to provide equal conditions of education to the overall pupil population is still evaluated as relatively high (4.26), as well as the access to education of all citizens regardless of their place of residence (4.67).

The presence of pluralism in education was evaluated by respondents, on a scale from 1-7, with 2.86. The explicit gap between the importance and presence is seen in several indicators. First of all, in two of the most important indicators - promoting tolerance toward all forms of difference (6.78) and representation of topics which deal with sexual and physical differences (6.41) - the discrepancy between evaluated importance and factual presence is extremely high. Respondents evaluated the presence of promoting tolerance toward all forms of difference with 2.59, and the presence of the representation of topics which deal with sexual and physical difference with 2.74. It is obvious that the education system is pretty closed and insensitive to difference and that to a great extent it perpetuates socially spread stereotypes.¹⁰

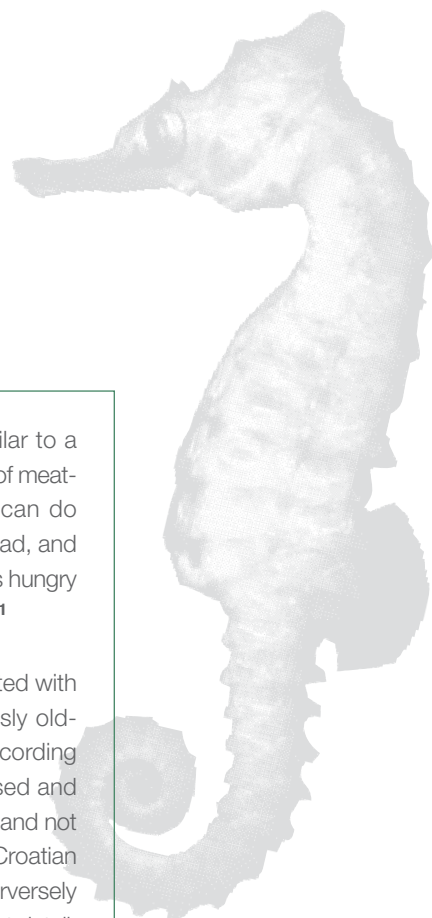
The other two indicators with great discrepancy between importance and

presence relate to the pluralism of the system itself. According to respondents' opinions, it is very important to have a great number of alternative educational programmes within the system (5.67) and that pupils, to a satisfactory degree, can choose educational contents (6.37). Similarly, according to their evaluation, alternative programmes are underrepresented (2.48), and the possibility for students to autonomously choose is very small (2.37). Indeed, the Croatian education system is extremely poorly diversified at all levels. First of all, institutional pluralism is not important. The differences between, say, primary schools are almost nonexistent and accidental and they are not a result of different goals, educational philosophies or work methods. This structural rigidity is a direct consequence of curricular rigidity. Curricula are not designed in a way that there is a core curriculum at the central level and that the remaining elements are left to the choice of schools and pupils. Quite the opposite, all schools of the same type must follow one single curriculum, completely defined at the state level. This certainly completely disables any diversification of the offer, which then, logically, eliminates all possibility to choose. This is a very serious problem, because only a diversified educational system can satisfy evidently different educational needs. The

Croatian educational system is similar to a restaurant which offers only one type of meat-based menu, so that vegetarians can do nothing but eat the side-dish and salad, and leave the restaurant only a little bit less hungry than they were when they came in.¹¹

This type of rigidity is directly correlated with an altogether specific and notoriously old-fashioned concept of education, according to which what should be standardised and controlled is the educational process and not the outcome of that process. In the Croatian educational process everything is perversely prescribed and standardised to the last detail: what contents the teacher should work on, what notions to use in doing that, the number of tests pupils should take, how many grades there should be and which columns these grades need to be written in. However, which knowledge and competences at the end of the educational system pupils should acquire is not mentioned in a single official document pertaining to the Croatian education system. This idea of education has direct consequences on autonomy and quality control.

The Croatian education system is extremely poorly diversified at all levels.



Educational institutions are still not protected from the recruitment of politically-correct principals, the independence of management structures in educational institutions from centres of political power is still very low, and curricula are still not de-ideologised.

The degree of autonomy and efficiency, which is the second criterion in importance (immediately after possibility of participation) was evaluated by respondents with 2.72 on a scale from 1-7. The autonomy of institutions, which is primarily perceived as independence from political centres of power and political pressure, is evaluated extremely low. Educational institutions are still not protected from the recruitment of politically-correct principals (2.46), the independence of management structures in educational institutions from centres of political power is still very low (2.52), and curricula are still not de-ideologised (2.78). The degree of the autonomy of universities was evaluated somewhat more positively (3.59).

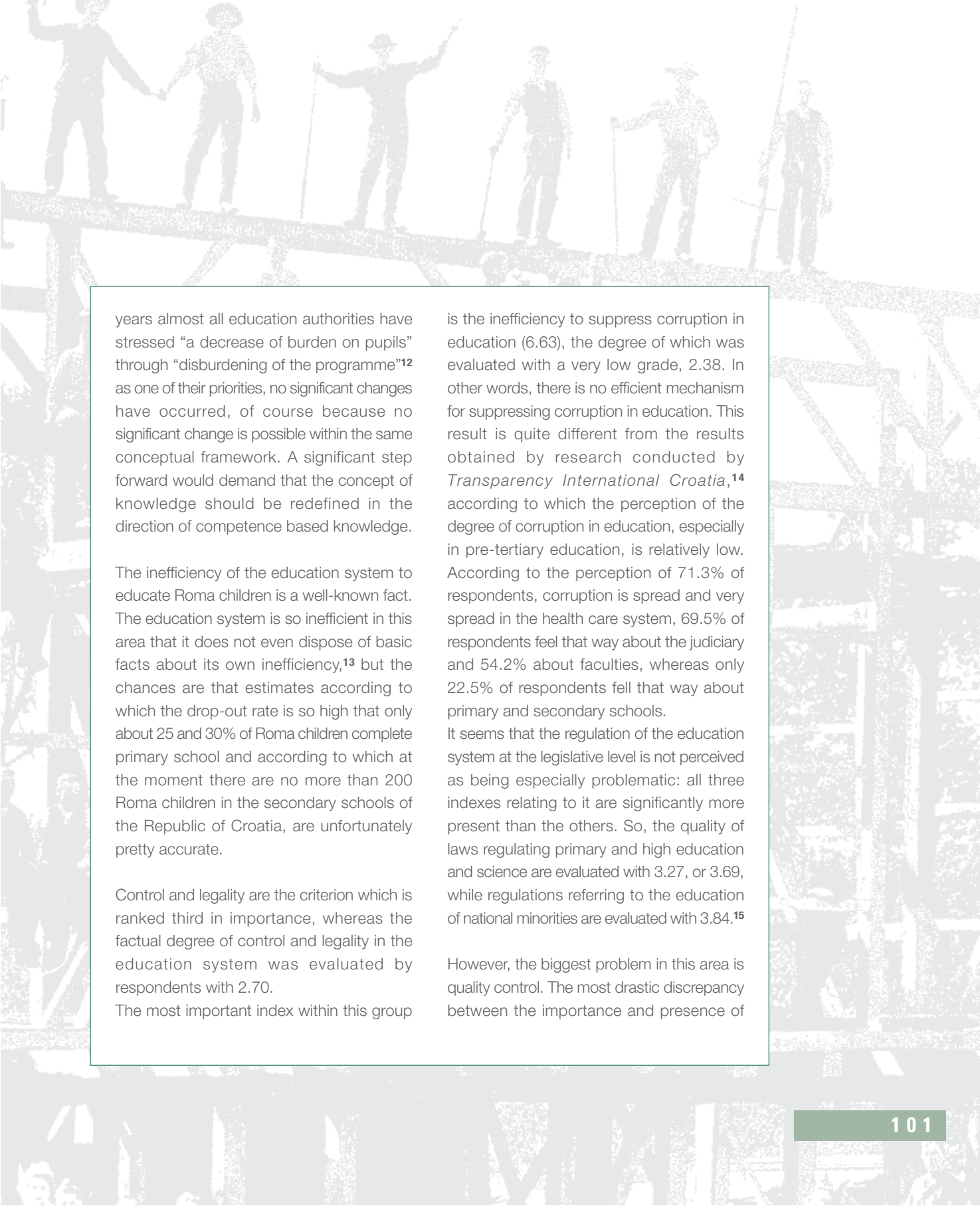
As for the second aspect of autonomy, the possibility for autonomous action by teachers and educational institutions in the implementation of educational programmes, the situation is somewhat better (3.26). However, we should note that in this area there is a great legislative gap between tertiary and pre-tertiary education. While universities, i.e. faculties, have great authority not only in the implementation, but also in the design, of educational programmes, the situation in secondary and primary education is completely different. Primary and secondary

schools have no authority whatsoever by law to design programmes.

In terms of the efficiency of the education system, there is a striking discrepancy between importance and presence of one specific indicator. Namely, the high effect of education on the development of the freedom of expression, self-actualisation and creativity of pupils is the second important indicator in this group (immediately after the autonomy of the university), whereas the degree of its presence is evaluated with a mere 2.30 (presence of only two indicators in the group was evaluated with a lower grade). What can be inferred from this is that the education system fails to achieve one of its basic tasks, and that is to enable and stimulate the personal development of pupils. Certainly, there are numerous reasons for that, but the complete lack of diversification of the system is certainly one of them.

Two indicators which are the least present are the freedom of primary school programmes from “formal” contents (2.22) and the efficiency of the education system in educating Roma children (2.19).

As for the former, it clearly confirms that the Croatian education system stems from the already abandoned concept of information based knowledge. Although in the last five

A background image showing several construction workers in silhouette, standing on a horizontal steel beam. They are holding tools like hammers and wrenches. The background is a blurred view of a construction site with scaffolding and other structural elements.

years almost all education authorities have stressed “a decrease of burden on pupils” through “disburdening of the programme”¹² as one of their priorities, no significant changes have occurred, of course because no significant change is possible within the same conceptual framework. A significant step forward would demand that the concept of knowledge should be redefined in the direction of competence based knowledge.

The inefficiency of the education system to educate Roma children is a well-known fact. The education system is so inefficient in this area that it does not even dispose of basic facts about its own inefficiency,¹³ but the chances are that estimates according to which the drop-out rate is so high that only about 25 and 30% of Roma children complete primary school and according to which at the moment there are no more than 200 Roma children in the secondary schools of the Republic of Croatia, are unfortunately pretty accurate.

Control and legality are the criterion which is ranked third in importance, whereas the factual degree of control and legality in the education system was evaluated by respondents with 2.70.

The most important index within this group

is the inefficiency to suppress corruption in education (6.63), the degree of which was evaluated with a very low grade, 2.38. In other words, there is no efficient mechanism for suppressing corruption in education. This result is quite different from the results obtained by research conducted by *Transparency International Croatia*,¹⁴ according to which the perception of the degree of corruption in education, especially in pre-tertiary education, is relatively low. According to the perception of 71.3% of respondents, corruption is spread and very spread in the health care system, 69.5% of respondents feel that way about the judiciary and 54.2% about faculties, whereas only 22.5% of respondents felt that way about primary and secondary schools.

It seems that the regulation of the education system at the legislative level is not perceived as being especially problematic: all three indexes relating to it are significantly more present than the others. So, the quality of laws regulating primary and high education and science are evaluated with 3.27, or 3.69, while regulations referring to the education of national minorities are evaluated with 3.84.¹⁵

However, the biggest problem in this area is quality control. The most drastic discrepancy between the importance and presence of

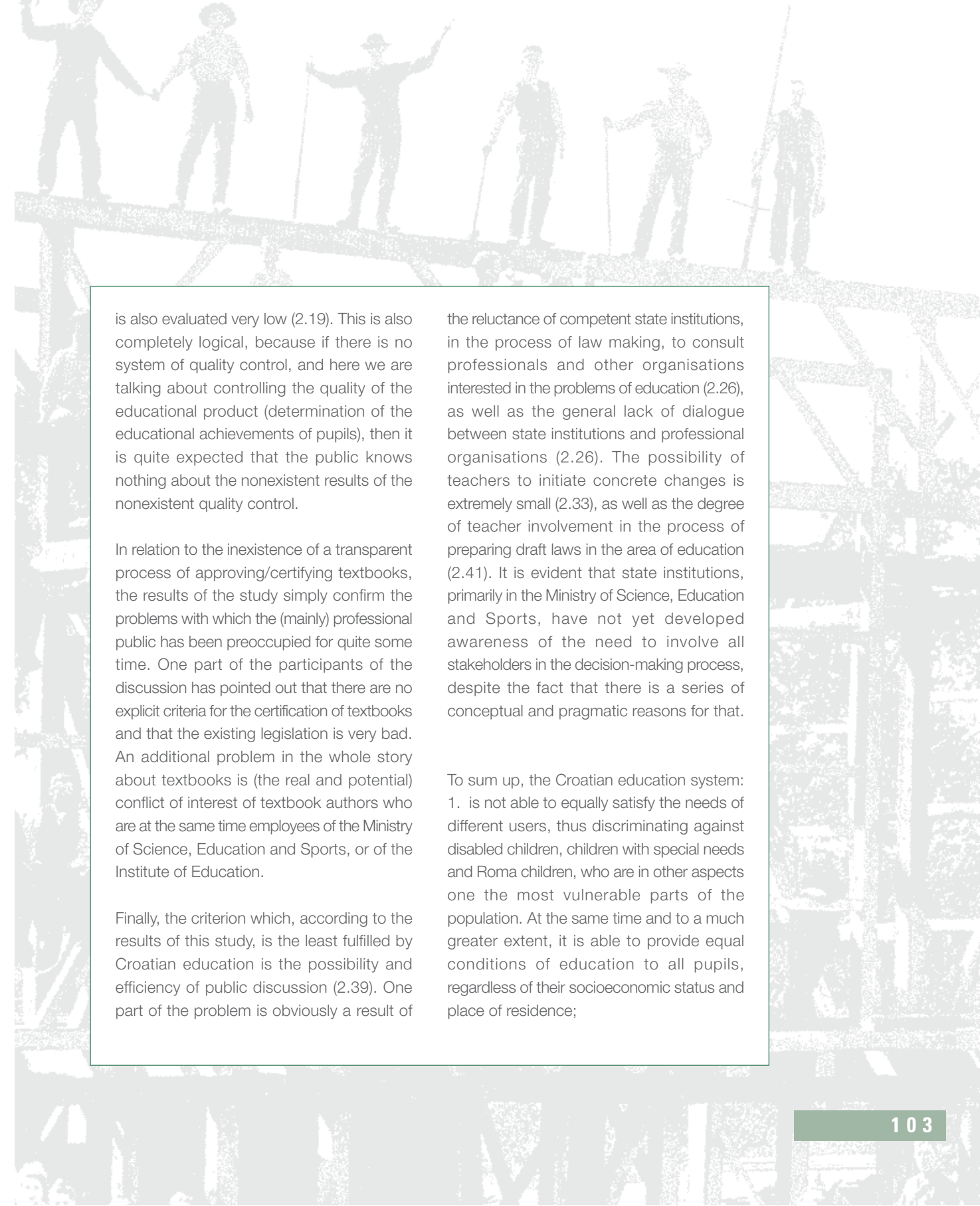
the index may be seen in the degree of development of rational parameters for the evaluation of the work of educational institutions: the importance of this index is very high, 6.41, while its presence is extremely low, only 1.89. This result is not surprising. Quite the reverse, it is a logical consequence of the fact that in the Croatian education system, at any level, there exists no, not even the least reliable, system of quality control of educational institutions. The lack of institutional autonomy in combination with the lack of quality control directly generates a situation in which the degree of accountability of educational institutions toward its users and the public is extremely low, just like the possibility to intervene in an efficient way in order to increase the quality of work.

This problem is related to two additional indexes whose presence is evaluated as very low: the possibility of parents and pupils to evaluate the work of teachers in primary and secondary schools (1.67) and the possibility of students to evaluate the work of professors and the quality of studies (2.33). As odious as the idea that pupils, parents and students have a say about the quality of work of teachers and professors may seem, we should not forget that the education system,

just like, for example, the health care system, provides a certain kind of public service and that it is completely legitimate that its users should be able to evaluate the quality of this service.

Transparency and availability of information is the criterion whose relevance is evaluated relatively low: on the scale of the importance of the criterion of openness of the education system, it was ranked one from last. It is ranked in the same position in the degree of its presence in the education system, because the factual presence of this criterion was evaluated with 2.62.

Two indicators with the greatest discrepancy between the degree of importance and presence, but also with a very low degree of presence in absolute terms, are the existence of the transparent system of the quality of work of educational institutions (1.93) and the existence of a transparent process of approving/certifying textbooks (2.04). The first indicator was already discussed in the previous section, so that at this point it is enough to state that the lack of a transparent system of quality control evidently generates a closed education system. We have to add that the indicator directly related to this one, i.e. the familiarity of the public with the educational results of the pupil population,



is also evaluated very low (2.19). This is also completely logical, because if there is no system of quality control, and here we are talking about controlling the quality of the educational product (determination of the educational achievements of pupils), then it is quite expected that the public knows nothing about the nonexistent results of the nonexistent quality control.

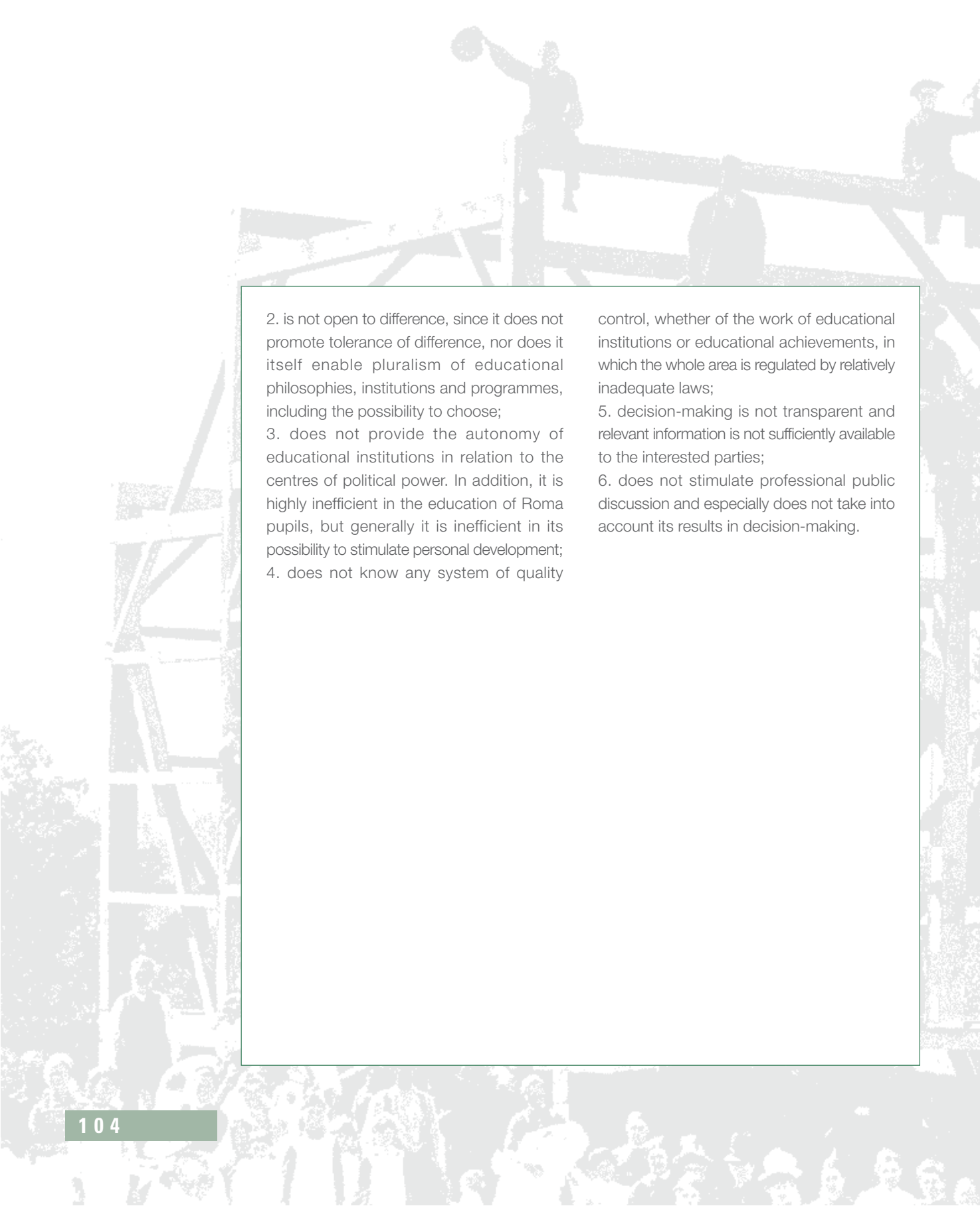
In relation to the inexistence of a transparent process of approving/certifying textbooks, the results of the study simply confirm the problems with which the (mainly) professional public has been preoccupied for quite some time. One part of the participants of the discussion has pointed out that there are no explicit criteria for the certification of textbooks and that the existing legislation is very bad. An additional problem in the whole story about textbooks is (the real and potential) conflict of interest of textbook authors who are at the same time employees of the Ministry of Science, Education and Sports, or of the Institute of Education.

Finally, the criterion which, according to the results of this study, is the least fulfilled by Croatian education is the possibility and efficiency of public discussion (2.39). One part of the problem is obviously a result of

the reluctance of competent state institutions, in the process of law making, to consult professionals and other organisations interested in the problems of education (2.26), as well as the general lack of dialogue between state institutions and professional organisations (2.26). The possibility of teachers to initiate concrete changes is extremely small (2.33), as well as the degree of teacher involvement in the process of preparing draft laws in the area of education (2.41). It is evident that state institutions, primarily in the Ministry of Science, Education and Sports, have not yet developed awareness of the need to involve all stakeholders in the decision-making process, despite the fact that there is a series of conceptual and pragmatic reasons for that.

To sum up, the Croatian education system:

1. is not able to equally satisfy the needs of different users, thus discriminating against disabled children, children with special needs and Roma children, who are in other aspects one of the most vulnerable parts of the population. At the same time and to a much greater extent, it is able to provide equal conditions of education to all pupils, regardless of their socioeconomic status and place of residence;



2. is not open to difference, since it does not promote tolerance of difference, nor does it itself enable pluralism of educational philosophies, institutions and programmes, including the possibility to choose;

3. does not provide the autonomy of educational institutions in relation to the centres of political power. In addition, it is highly inefficient in the education of Roma pupils, but generally it is inefficient in its possibility to stimulate personal development;

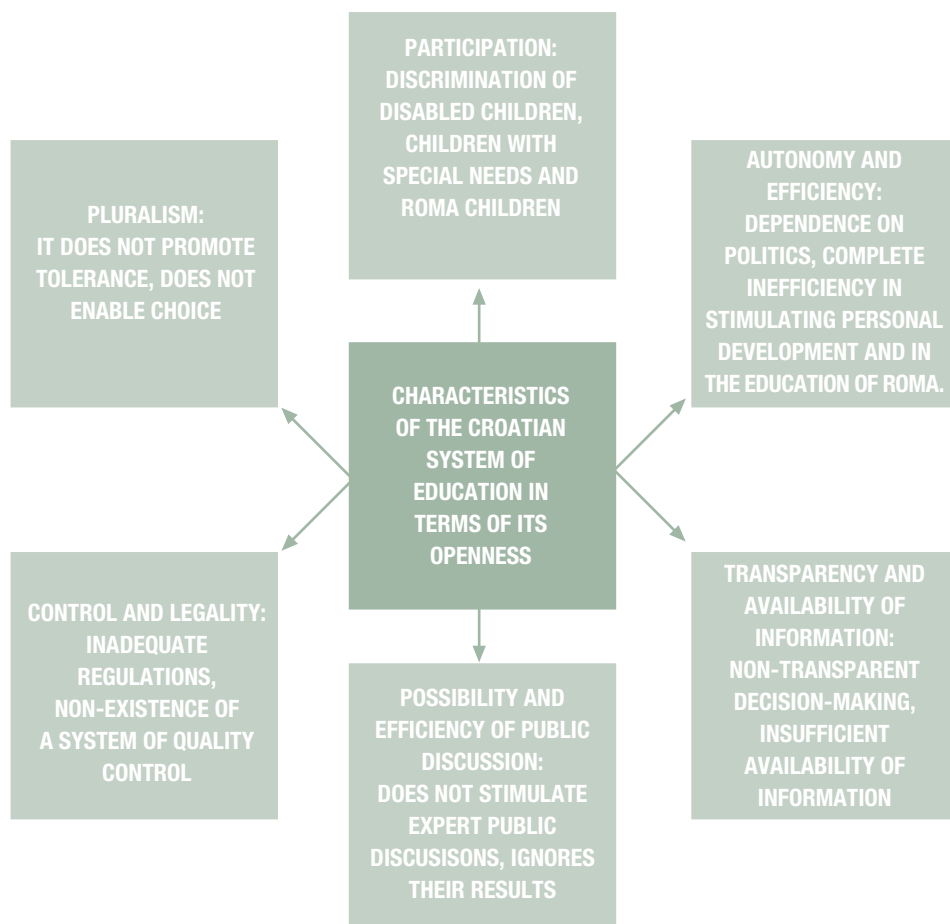
4. does not know any system of quality

control, whether of the work of educational institutions or educational achievements, in which the whole area is regulated by relatively inadequate laws;

5. decision-making is not transparent and relevant information is not sufficiently available to the interested parties;

6. does not stimulate professional public discussion and especially does not take into account its results in decision-making.

Figure 4 - Characteristics of the Croatian system of education in terms of its openness



Recommendations

The proposal of recommendations is based on the analysis of an ideal model of education system in terms of openness, the analysis of the evaluation of the degree of openness of the Croatian education system, and on the basis of recommendations formulated by experts in a separate part of the questionnaire.

1. To radically increase the efficiency of the education system in the education of disabled persons and persons with special needs. To eliminate physical barriers in educational institutions, to equip educational institutions with adequate facilities, to adapt educational programmes so that disabled persons and persons with special needs can obtain relevant knowledge and experience necessary for successful integration.
2. Radically increase the efficiency of the education system in the education of the Roma. To enable all Roma children a free two-year preschool programme, to dismantle segregated classes and introduce programmes of assistance in learning. To introduce a preferential quota for the enrolment of the Roma in secondary schools and universities.
3. To change curricula and textbooks so that they present all kinds of difference in a realistic and tolerant way.

4. Diversify the education system, enabling a selection of different educational concepts and programmes.

5. In primary and secondary education change the structure of curricula so that only one part should be defined at the central level (core curriculum), while the formation of the remaining part should be delegated to schools.

6. In primary and secondary education change the structure of curricula so that elective courses are introduced.

7. To change regulations and practice to enable a higher degree of work of educational institutions.

8. Deregulate the teaching process and introduce a rational and transparent system of quality control in education.

9. Allow students, pupils and their parents to evaluate the work of teachers and educational institutions.

10. Make decision-making processes, especially the process of certifying textbooks, transparent and, as far as possible, public.

11. Allow all interested parties to obtain precise and relevant information on the education system and educational institutions in a simple way (education web portal).

12. Initiate, organise and support public discussions in which, on a partner basis, all stakeholders in education will participate. To take into consideration the results of these discussions in making all important decisions.

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¹ This relates to the so-called *hidden curriculum* which contains all the things pupils learn "from the way work is planned and organised in schools, but which are not included in the planned teaching, while persons responsible for the organisation of teaching are not even aware of them" Kelly, A.V., *The Curriculum: Theory and Practice*, Paul Chapman, London, 1983, p.8.

² Bridges T., *The Culture of Citizenship: Inventing Postmodern Civic Culture*, SUNY, Albany, 1994, p. 4-5

³ Importance was evaluated on a scale of 1-7, where 1 means completely irrelevant and 7 extremely important.

⁴ Only to a certain extent because efficiency does not appear as a separate set of indicators, but together with autonomy. I suppose that the importance of this set of indicators, had it been separated from autonomy, would be significantly lower.

⁵ Especially if efficiency is defined as "ability to achieve set goals".

⁶ State Bureau of Statistics, www.dzs.hr

⁷ National Programme for the Roma of the Government of the Republic of Croatia, Zagreb 2003, p. 31

⁸ "Ministry of Education and Sports does not have a precise number of the Roma who should be included in a certain level of the education system.", *ibid*, p. 31

⁹ See "ERRC Legal Action in Croatian School Segregation Case", www.errc.org; also Pleše B., *Racial Segregation in Croatian Primary Schools: Romani Students Take Legal Action*, in Roma Rights, Number 2 and 3, 2002, pp. 129-137.

¹⁰ See Baranović B., *"Slika" žene u udžbenicima književnosti* (The "Picture" of A Woman in Literature Textbooks) IDIZ, Zagreb, 2000 about gender stereotypes.

¹¹ That is why, by the way, the key criterion of selecting schools in Croatia (primary, secondary, but sometimes even faculty) is their distance from home.

¹² "The curricular approach to changes in primary education", Ministry of Education and Sports of the Republic of Croatia, Zagreb, 2002; "The Croatian National Educational Standard", Ministry of Science, Education and Sports of the Republic of Croatia, Zagreb 2005.

¹³ See footnote 7

¹⁴ The index of perception of corruption in 2004 - tabular overview, Zagreb 2005, www.transparency.hr

¹⁵ It is interesting and indicative that Croatia has laws which regulate specific levels of the education system (pre-school, primary, secondary and tertiary education), but it does not have any fundamental law on education.



The results of the survey of the economic dimension of the openness of society show that Croatia still has the characteristics of a *closed society*. Only 10.9% of respondents from the sample of the general population identify an open society with a society "... which has no borders, in which there is completely free movement of persons, goods and capital," and a large majority of respondents from that sample advocate strict restrictions in economic relations with foreign countries. On the other hand, an analysis of expert opinion shows that out of six offered social dimensions (politics, minorities, law, education, the economy and the media) the economy was rated as the least important in defining an open society.

This work is an attempt to analyse the principal results. We will try to assess the dimensions, causes and consequences of such attitudes. In the first part of the paper, we define the perspective of the interpreter. The lens to a certain extent gives shape to the image we see, so for a correct understanding of the text the reader should be aware of the perspective of the values from which this text was written. In this way, the text will be better understood, and the critical analysis behind it will be more valid. The second part of the paper presents in detail the most interesting

results. The third part discusses their causes and consequences, while the fourth part draws conclusions.

On the Perspective of the Interpreter

In an economic sense, an open society is a society with a functioning free market. The term often causes confusion. The advocating of an open or free market is sometimes incorrectly interpreted as advocating abstract spontaneity in social and economic relations, in which selfishness and hedonism receive legitimacy which is superior to any collective feeling, and the profit motive is set on a pedestal of the highest social value. Sometimes it is said that the proponents of the idea of the free market consider that spontaneity produces the best possible social order without the influence of the collective will (of the state). Hence this idea is wrongly identified with abstract and vague concepts such as anarchy, "the invisible hand", unscrupulous capitalism, or economic Darwinism.

The results of the survey of the economic dimension of the openness of society show that Croatia still has the characteristics of a closed society.

In order to avoid a chaos of terms, from the start the following position should be stated: naïve and dangerous faith in the fact that pure spontaneity may create an ideal society is as dangerous as striving to label any advocacy for the functioning of an open or free market as advocacy for an unattainable ideal model. Each reasonable definition of the economic dimension of openness (and advocating it) has to start from several facts which mark the real functioning of the modern national and global economy. Frederich A. Hayek had in mind the dimension of reality mentioned above when he wrote:

"It is important not to confuse opposition to this kind of planning and a dogmatic laissez-faire attitude. Liberals advocate the best possible use of the powers of market competition with the aim of harmonising the efforts of an individual. This argument does not defend the situation as is. The liberal attitude is based on the belief that competition is the best way of directing individual efforts where it may emerge. This attitude does not deny, but stresses, that a good functioning of the market competition system requires a well designed legal framework, and that the existing and inherited legal rules are not devoid of serious deficiencies. This does not deny that in conditions in which it is not

possible to create the conditions necessary for market competition we have to resort to other ways of managing economic activities" (Hayek, 1944: 36).

So, the idea of the free market is not the exclusive ownership of a dogmatic laissez-faire. A true free market rarely emerges spontaneously, because the markets are rooted in existing social institutions. This means that the functioning market reflects the inherited family, political and other relations of power. Finally, the distribution of power generated by the market itself may sometimes reduce the efficiency of its functioning (e.g., monopolies). Therefore, the efficient functioning of a free market almost always entails social effort in designing and implementing the corresponding regulation. There are also situations where the free market cannot emerge, so society sometimes has to use other means of articulation of economic activities, such as state intervention and hierarchical (centrally-planned) organisation.¹ However, before passing a definite conclusion that the market has to be replaced or limited by another means of coordinating economic activity, several important questions need to be answered (Hayek, 1944: 37):

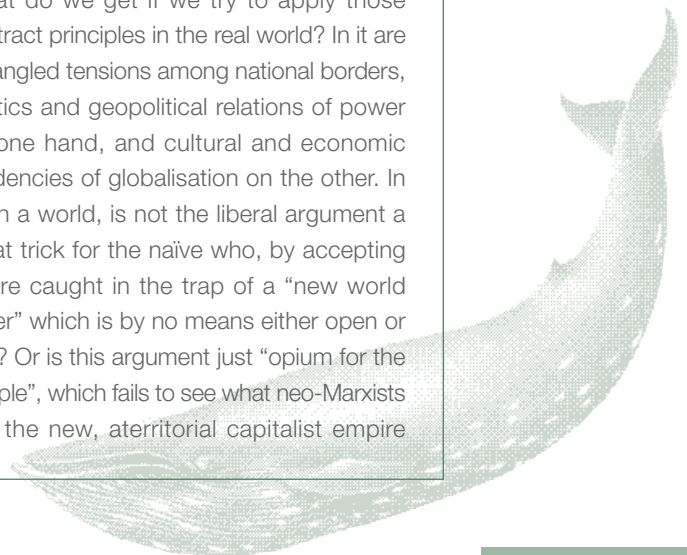
1. Have the economic subjects enjoyed freedom in purchasing and selling goods or services at any price for which they could find a partner for exchange?
2. Have the economic subjects enjoyed the freedom of producing, selling and buying anything that can be produced, sold and purchased?
3. Has entry into relations of exchange been the same for all under the same terms and conditions?
4. Have individuals or groups prevented the free entry into relations of exchange by open or hidden violence?

If the answers to the first three questions are “no”, and the answer to the fourth question is “yes”, then the solution to the problem may lie not in the restriction or suspension of the market, but in an effort towards improving its functioning: increasing the quality of market information, preventing violence inspired by interest which is pursued with the aim of limiting entry into the market, etc. The response to the question about why this is the thing that should be done is outside the domain of the narrowly understood economy. Such a response stems from philosophy, history and an analysis of the state. For instance, Friedman (1962) saw freedom and competition as a counterbalance to the

thriving role of the state which is intrinsically prone to spreading its authorities and bureaucratic controls over resources, and as the protection of individuality and diversity from which the progress of civilization stems:

“Columbus did not set out to seek a new route to China in response to a majority directive of parliament, though he was partly financed by an absolute monarch ...no one [of those mentioned] opened new frontiers of human knowledge and understanding ... in response to government directives. Their achievements were the product of individual genius, of strongly held minority views, of a social climate permitting variety and diversity” (Friedman, 1962: 15).

What do we get if we try to apply those abstract principles in the real world? In it are entangled tensions among national borders, politics and geopolitical relations of power on one hand, and cultural and economic tendencies of globalisation on the other. In such a world, is not the liberal argument a great trick for the naïve who, by accepting it, are caught in the trap of a “new world order” which is by no means either open or just? Or is this argument just “opium for the people”, which fails to see what neo-Marxists call the new, aterritorial capitalist empire



If “open” means “consumed”, “unified” or “uniformed”, then it may make sense to be economically closed towards the world.

The so-called “infant industry argument” starts from the fact that domestic industry, in its initial phase of development, needs to be protected from stronger competition from abroad until it can “stand on its own feet” sufficiently well to fight in the open, global market.

(Hardt and Negri, 2000)? From this perspective it is fully legitimate to provide a warning that the world is not organised according to the model of an open society.

If we adopt those tenets, and let us admit that it is possible to find arguments for them as well, the question emerges about how to define “openness” in such a world and, more concretely, how to define the “open market”

and the “open society” on the level of a state, and how to assess the attitudes of people towards openness in terms of values? If “open” means “consumed”, “unified” or “uniformed”, then it may make sense to be economically closed towards the world. Particularly if thereby openness “inside” and global cultural and economic diversity are preserved.

If the interpretation presented above were relevant, we would have a serious problem with the interpretation of the attitudes of

closedness/openness. If closure “towards the outside” in the brave new world represents a prerequisite for (a) internal openness and (b) preservation of global cultural and economic diversity, then the attitudes about

openness/closedness cannot be interpreted on a linear two-dimensional scale. This could represent a serious methodological problem in interpreting the results of this study.

Economic theory and policy know numerous examples in which the described way of thinking is translated into concrete economic policy measures. The so-called “infant industry argument” starts from the fact that domestic industry, in its initial phase of development, needs to be protected from stronger competition from abroad until it can “stand on its own feet” sufficiently well to fight in the open, global market. The offshoot of this argument is also the topical thesis on limiting the sale of real estate to foreigners because, allegedly, its value is currently underrated, so domestic owners sell their property almost for nothing, probably unaware that in several years they will be able to sell the same property at considerably higher prices. A similar argument also permeates discussions about the privatisation of banks and telecommunications.

Although they are very open, these theses face several logical problems. The proponents of such positions as a rule do not explain how the restrictions will lead to the desired result, but imply that the desired result




If it turns out that the functioning of the market inflicts real damage on the community and if it is proved that a form of restriction or replacement of the market by another social coordination mechanism may rectify the operation of the market, there is no dogmatic argument for defending the free market to the last breath - particularly in the light of the functioning of the global economic system.

degenerates towards a kind of a mystic automatism. It is generally not explained how and why the protection of domestic industry will be conducive to its development; how such industries will stop being eternal beneficiaries of implicit and explicit state subsidies at the expense of taxpayers; how the formation of powerful interest groups and lobbies around them will be prevented; and when the day will come when somebody will proclaim that those industries are ready for global competition without the assistance of the state. It is not explained how the state can be prevented from misusing (for who knows how long) its influence over banks and from directing money into failed projects. Translated into the current problem of real estate, the question emerges about how the wealth of our people, without the opening up of the economy and its integration into the global economy, will grow so much that in five, ten or fifteen years no one has the need to sell real estate or that those who want to sell it will earn more from it than they would today.

Due to the lack of theories and, more importantly, concrete empirical evidence about the impossibility of avoiding the deviations of state intervention indicated above, pragmatic liberalism represents a

useable norm or benchmark for evaluating the economic dimension of the openness of society. If it turns out that the functioning of the market inflicts real damage on the community and if it is proved that a form of restriction or replacement of the market by another social coordination mechanism may rectify the operation of the market, there is no dogmatic argument for defending the free market to the last breath - particularly in the light of the functioning of the global economic system. However, naïve axioms such as “the loss of control over banks means the loss of national sovereignty”, “in globalisation the big fish eat the small fish”, “it is better for the foreigners to have money and we the real estate than the other way round” and “cottage cheese and cream” are nothing more than signals which invoke collective emotions, but which do not lead to concrete and useable recommendations for conducting economic policy. Logical and articulated theories about why and how restrictions and closedness may lead to wellbeing are missing, and so are the concrete recommendations about the measures and mechanisms which need to be activated in order to attain the declared objectives. If there were such recommendations, they could be discussed. So, everything boils down to fighting ghosts, where it is the general public that gets hurt



most, that is most confused and scared, and whose attitudes waver like leaves swaying in the wind. Perhaps citizens rationally feel the danger of opening up too quickly, but the intellectual and political elite does not succeed in presenting this danger to citizens in its real dimension. Instead of explanations and objective assessments of this danger, everything comes down to a barrage of emotions set off by a sequence of triggers, which arouses tremendous fear of openness, and which is partially registered in this study as well.

Returning to our initial definition of the free market, we will understand more easily why in this study the following list of four indicators of economic openness were selected (the order of enumeration shows the order of importance attributed by the polled experts):

1. Control and lawfulness
2. Equality in market competition
3. Autonomy and efficiency
4. Possibility of participation in market competition

Control, lawfulness, the possibility of participation and equality of chances are in no collision with an efficient free market. On the contrary, to a great extent they represent

the prerequisites for its sound functioning. The highest rank given to control and lawfulness and the lowest rank to the possibility of participation in market competition indicate that Croatia still suffers growing pains in the context of the development of a free market. It is not easy to distinguish whether the respondents advocate control and lawfulness in the sense in which their role was defined by Hayek, or whether this is actually a manifestation of paternalistic mentality and an invitation to the state to act in those places and at those moments even where and when it is not necessary. Also, the lowest ranking of the possibility of participation in market competition may also be explained as an underestimation of the role of concrete factors of entrepreneurship, innovations and launching new projects and firms, in comparison with the somewhat more abstract factors of control, lawfulness, autonomy and efficiency. We will try to show in this paper that, based on the survey of experts, it is very difficult to draw definite conclusions about openness/closedness, and the changes in these aspects, because the attitudes presented are sometimes contradictory.

A background image showing several construction workers in silhouette, standing on a horizontal steel beam high above the ground. They are holding tools like hammers and wrenches. The background is a blurred view of a construction site with vertical rebar and other structural elements.

Results

In addition to the fact that only 10.9% of respondents from the sample of the general population identify an open society with a society "... which has no borders, in which there is completely free movement of persons, goods and capital," even more worrisome is the fact that only 17.6% of the respondents either do not at all, or mostly do not agree with the ban on selling Croatian companies to foreigners. While 17.7% of respondents do not know what to think about this ban, as many as 17.9% mostly agree, and 46.8% fully agree with a total ban on selling Croatian companies to foreigners. As can be fully

expected, similar results are obtained in the case of the protection of domestic production and preferences given to domestic firms over foreign ones in state public tenders. Such an attitude of the general public may be interpreted as a preference for a closed society when it comes to international economic issues.²

Research into the opinion of experts enables more detailed insight to be gained into the perception of an open/closed society. The following table indicates the recommendations for increasing the economic openness of society which were most frequently indicated by the polled experts from economic areas. All recommendations appear two or more times among the 92 recommendations provided by 21 experts:

The highest rank given to control and lawfulness and the lowest rank to the possibility of participation in market competition indicate that Croatia still suffers growing pains in the context of the development of a free market.

Table 1 - A Review of Frequent Recommendations

No.	Recommendations	Number of Repetitions of Recommendation s in 92 Options	Frequency in % (Number of Repetitions as a Share of the Total Number of Recommendations)
1	Greater expeditiousness and independence of the judiciary in resolving economic cases	5	5,4%
2	Simplifying and lowering the cost of the procedure of establishing companies	5	5,4%
3	Protection of market competition and elimination of monopolies	5	5,4%
4	Defining sectoral development strategies and their professional, depoliticised implementation	3	3,3%
5	Preparation of a national development plan and strategy	3	3,3%
6	Fight against the grey economy	3	3,3%
7	More efficient judiciary and depoliticising of operations of public companies	3	3,3%
8	Reducing taxes in order to increase competitiveness	2	2,2%
9	Depoliticising of state subsidies to certain companies	2	2,2%
10	Consumer protection	2	2,2%
11	Protection of creditors	2	2,2%
12	Improvement of registries of business entities and ownership (on line)	2	2,2%



The surveyed experts understand very well the importance of the legal, judicial and information (registration) infrastructure for the functioning of the open market.

The most frequently mentioned recommendations belong to, let us say, “hard core” recommendations for the improvement of economic openness. The surveyed experts understand very well the importance of the legal, judicial and information (registration) infrastructure for the functioning of the open market. There is a certain dilemma with regard to recommendations 4 and 5, which deal with development plans. The correlation between development plans and the increasing openness of society is not clear, even if the implementation of those plans are conducive to an increase in output and social wellbeing (which is not necessarily the case). However, we cannot a priori exclude the possibility that various forms of development strategies might contribute to openness if they included incentives for improvement in the functioning of the open market.

A review of the areas rated as the most and the least important for the economic openness of society reveals a similar picture. The table below shows the average ratings provided by all the experts (not only those related to the economy) for certain measures, i.e., indicators of openness. It is evident from the review of 10 areas or indicators with the highest ranking of importance that the greatest importance is attributed to

encouraging market competition, the block of legal issues (competence and efficiency of the judiciary, protection of rights, anti-corruption), and independence and depoliticising. However, looking at 10 areas or indicators with the lowest rankings, it seems unusual that among them there are as many as three areas which represent an important component in encouraging market competition (the rare occurrence of exclusive contracts, the rare occurrence of price wars and dumping, the rare occurrence of price discrimination) and another three areas which are extremely important for market competition (low costs of registration of property, low costs of establishing enterprises, and availability of information on transactions with associated persons). We can conclude that there is a logical discrepancy between the high ranking of the importance of encouraging market competition when it is defined and presented as an abstract idea, and the low ranking of its importance when it is presented in a concrete form. This discrepancy can be explained by the lack of knowledge of the concrete content of the notion of protection and encouraging market competition in the sample of all experts.

Table 2 - Ten Highest and Ten Lowest Ranking Areas Significant for the Economic Openness of Society

10 Highest Ranking	Rate of Import.	Std. dev.
Highly developed core institutions which regulate the freedom of market competition	6,79	0,1
Competence of judiciary to process criminal offences in the area of economic crime	6,74	0,1
Efficiency of the judiciary in processing criminal offences in the area of economic crime	6,74	0,1
High level of development of protection of rights and ownership	6,63	0,14
Good regulation and practice of public procurement	6,61	0,14
Independence of the work of private entrepreneurs from political influences	6,53	0,16
Independence of public enterprises from political influences	6,53	0,18
Efficient anti-corruption in the economy	6,53	0,19
Neutrality of state and inspection services in law enforcement	6,47	0,18
Efficient regulation of the protection of creditors	6,47	0,18

10 Lowest Ranking	Rate of Import.	Std. dev.
Low frequency of violation of other components of the Labour Act	5,58	0,19
Low costs of registration of property	5,47	0,29
Rare occurrence of disallowed exclusive contracts and similar practices	5,39	0,42
Rare occurrence of "price wars" and dumping practices	5,39	0,37
Availability of information on transactions with associated persons of companies whose securities are listed on the stock exchange	5,37	0,32
Low costs of establishing companies	5,32	0,34
Possibility of employing foreign workers in jobs related to "skills in short supply"	5,26	0,34
Rare occurrence of price discrimination	5,06	0,42
Efficient encouragement of export activities of companies by competent state institutions	5,05	0,42
Availability of information on salaries and other perks of directors of public enterprises	4,95	0,33

Poor knowledge of concrete conditions and the importance of competition may also explain the lowest ranking of importance that the experts gave to the area of the economy in defining and attaining an open society. However, this does not have to be either the only or the most important reason. In Croatia, the social groups (e.g. of the entrepreneurial elite) which would, independently of the government, promote a free market and open society are obviously weak. The weakness of such groups may also very well be the reason for the low ranking of importance given to the economic areas for attaining openness in society.

The surveyed representatives of the professional elite rightly perceive Croatia as an internationally open country, so they do not attribute great importance and do not see great problems in these kinds of issues.

Ten Areas in which the Difference between the Importance and the Assessment of the Achievements is the Greatest

Efficiency of the judiciary in the processing of criminal offences in the area of economic crime
Competence of the judiciary in processing criminal offences in the area of economic crime
Efficient anti-corruption in the economy
Independence of public enterprises from political influences

Short time required for entering real estate into the court register

Highly developed core institutions which regulate the freedom of market competition

Efficient regulation of the protection of creditors

Transparency in the process of the privatisation of state enterprises

Readiness of competent state institutions to accept specific suggestions by associations of experts

Frequent evaluation of social developments and benefits of legal solutions which regulate the area of the free market

If we attempt to put these areas in order to indicate more clearly the priority areas which need to be tackled in order to increase the openness of society, then the areas of recommendations look as follows:

1. Increasing the efficiency, independence and competence of the judiciary and the protection of creditors
2. Increasing transparency in the process of privatisation, and depoliticising the management of public companies
3. Strengthening and ensuring the development of the Croatian Competition Agency
4. Deepening the dialogue between the private and public sectors.

It can also be seen that experts do not attribute great importance (and neither do they see particularly big problems) in the part related to international economic openness. An analysis of the part of the questionnaire where experts ranked the importance and evaluated the achievements in specific areas shows that the areas of importance for international economic openness ranked quite low:

The surveyed representatives of the professional elite systematically underestimate the importance of international openness and have reservations about an open, global economy.

Table 3 - Ranking achievements of importance for international economic openness

Subject of ranking	Order in the List of 74 Topics	Assessment of Importance
Equality of conditions for investment for domestic and foreign investors	12	6,39
A customs system which does not discriminate between individual market participants	34	6,05
Favourable conditions for Greenfield investments	39	5,95
Possibility of employing foreign workers in activities related to "skills in short supply"	71	5,26

The conclusion about the low ranking of topics related to international openness should be taken with some reserve, since questions related to the freedom of the internal market predominated in the questionnaire, so that it was not structured in a manner to enable separate consideration of the problems of the freedom of the internal market from considerations of the problems of international economic openness. However, if the conclusion about the low ranking of the problem of international openness is correct, we need to try and explain it. Two hypotheses may serve as a possible explanation:

1. The surveyed representatives of the professional elite rightly perceive Croatia as an internationally open country, so they do not attribute great importance and do not see great problems in these kinds of issues.³
2. The surveyed representatives of the professional elite systematically underestimate the importance of international openness and have reservations about an open, global economy.

The only way to continue with a relatively qualified discussion concerning this problem is to attempt, through identified cases of increasing openness or closedness, to recognise the extent and the kind of importance attributed to topics related to the international openness of the Croatian economy. In terms of methodology, such a continuation is questionable,

because we are monitoring the indicators of the change in closedness/openness which were pointed out by experts from the area of the economy (21 of them), whereas the data in the table above pertain to the whole sample of experts. Yet, even with methodological reservations, observations may be interesting.

Each expert was requested to describe three events which may be considered to be indicators of increasing openness, and three events which may be considered indicators of increasing closedness. A total of 53 indicators of increasing openness and 54 indicators of increasing closedness were collected (some experts did not fill out all three options). As many as 9 or 17% of the indicators of increasing openness cited by experts are related to the accession of Croatia to the EU. The examples most frequently cited were: acquiring candidate status, consensus about the negotiation team and harmonisation of legislation with EU standards.

As far as other indicators of increasing openness are concerned, there is a great dispersion of statements which are mostly not related to the area of the economy. Among other indicators of increasing openness, economic experts most frequently quote the

following: the outcome of the presidential elections, the Puljiz case and the resignation of Minister Žužul.⁴ If we subtract from 53 indicators the 9 related to EU accession, among the remaining 44 indicators another 14 “pure” economic indicators can be recognised: reducing the tax burden through a mini-tax reform, privatisation of agricultural combines - PIKs (Belje and Vrbovec), building business premises, construction of motorways, emergence of new telephone operators, cancellation of the tender for the construction of the section of the motorway that had been awarded to Bechtel, encouraging foreign investments in the municipality of Dugopolje, Greenfield investments of the firm Caledzonja, suspension of dubious privatisations, establishing a consumers’ association and the enactment of the Consumer Protection Act, privatisation of banks, beginning to regulate the relations in the construction industry, and the road show of the Minister of the Economy. For another couple of indicators it can be said that they are related to the economy in the broader sense: revealing dubious actions of the land registry department of the Brač court, establishing the “one-stop shop”, the commencement of the reform of the education system, and more public information about the Lenac case.

Monitoring the indicators of increasing closedness shows another interesting fact: the same events represent a sign of increasing openness for one group of experts, whereas for another they represent a sign of increasing closedness. This was so with the “cases” of Puljiz, Bechtel, Žužul, Lenac and Match-telecom / Tele 2 (granting a concession to a third mobile operator). Among 54 indicators of increasing closedness, those “cases” are mentioned in as many as 14 examples (26%). Abusing the position of interpreter, I would say that the occurrence of scandals, and even their increasing number, at our level of development of democracy and market economy, could better be interpreted as an indicator of increasing openness than as an indicator of increasing closedness. We can interpret this as increasing openness because suspicious and disputed acts of the authorities come sooner under the magnifying glass of the general public, which requires more and more information about such cases. In the long run, this could lead to a correction of the disputed procedures. Of course, the media and the general public are not infallible and they cannot pass ultimate judgment. The lack of competence, insufficient information and considerable room for manipulating information generally create “interference” when it comes to the potential to disclose

the actual scandal (and not one which is not), and to its comprehensive presentation to the general public and forming an opinion about it, as objectively as possible.

Among the remaining 40 indicators of increasing closedness of society, the following were cited two or three times: the Gotovina case, the Družba Adria case, low environmental awareness, slowness of court proceedings, pressures of vested interests in the work of the Energy Regulatory Council and the Telecommunications Regulatory Council and the problems with public procurement (MORH, Bechtel). Among the remaining indicators of increasing closedness, only four are related to the area of public finance (postponing the reduction of VAT, increasing veterans’ rights, increasing pensioners’ rights by introducing a new pension increase calculation formula, continuation of subsidising technologically obsolete production), and another four pertain to relations in the area of market competition (weakening of small suppliers, increasingly longer terms of payment to small suppliers by large chain stores, refusing to issue a concession for ferry transport to a private firm, and prolonging the terms of payment by the Croatian Institute of Health Insurance). Three statements pertain to the area of

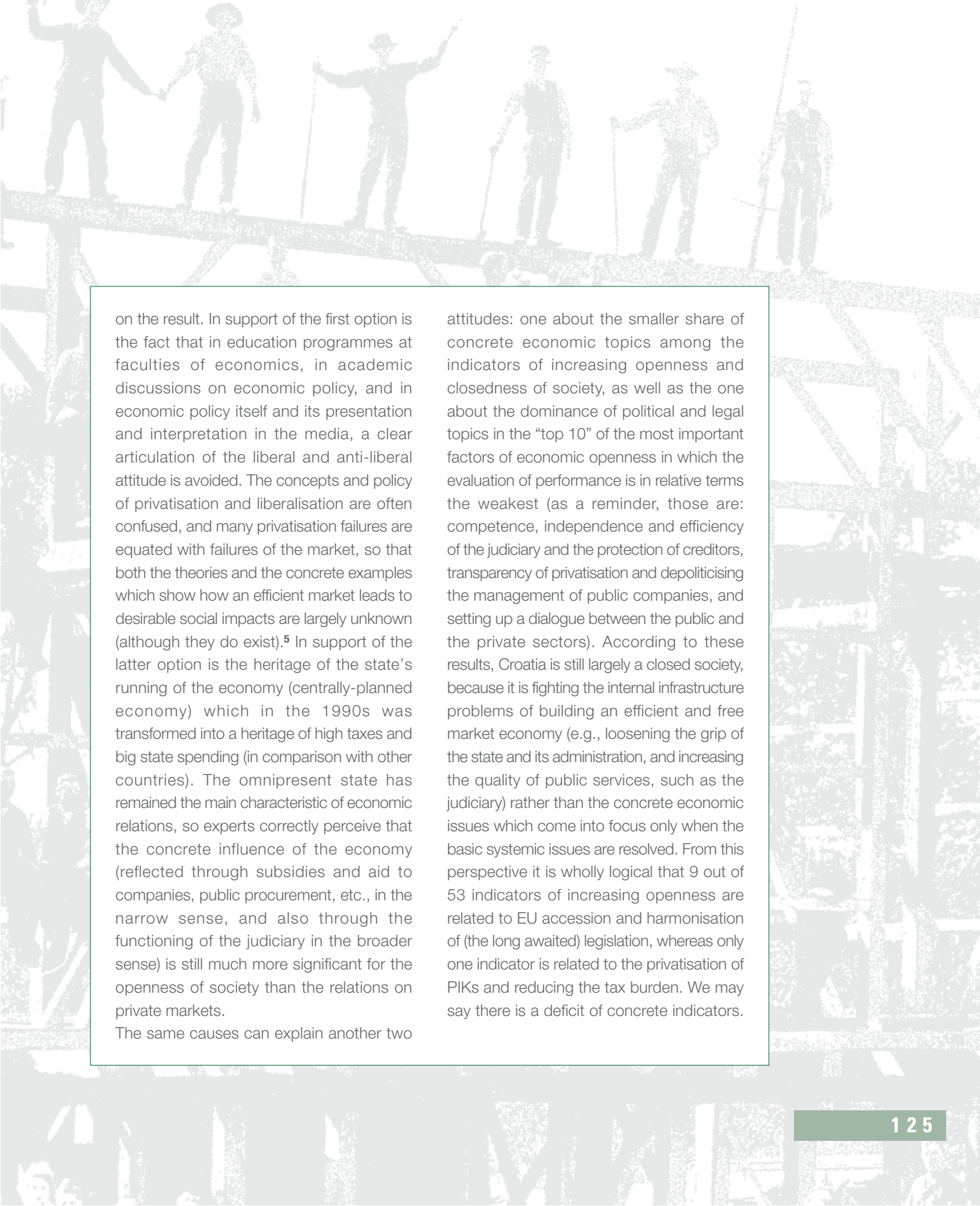
The omnipresent state has remained the main characteristic of economic relations, so experts correctly perceive that the concrete influence of the economy (reflected through subsidies and aid to companies, public procurement, etc., in the narrow sense, and also through the functioning of the judiciary in the broader sense) is still much more significant for the openness of society than the relations on private markets.

banking and finance (surrendering banks to foreigners, the disinclination of banks to invest in companies, and the introduction of new monetary and foreign exchange restrictions by the Croatian National Bank). They indicate ambivalence in the attitude towards foreign investments in banking. The spectrum of the statements not mentioned is quite wide and pertains mainly to non-economic topics.

As in the previous examples, we conclude that wider social topics are reflected in references to indicators of increasing closedness by economic experts. Economic topics in the narrow sense are in the minority. It is very difficult to say whether such a result comes from the fact that the surveyed economic experts mostly engage in wider social topics, or whether they rationally perceive that economic openness depends on other dimensions of social openness to which they, correctly, attribute much greater importance.

The Causes and Consequences of the Presented Results

The study shows that the economic dimension of the openness of society in Croatia is given comparatively low significance. An explicit ranking of the importance of individual areas for the openness of society by all the surveyed experts point to this conclusion (the economy was ranked as the least important), as does the listing of indicators of increasing openness and closedness by the economic experts themselves (where concrete economic topics are in the minority, and wider political topics in the majority). There are two possible causes of such a result. First, the surveyed experts do not sufficiently value the importance of the economic sphere (freedom of the market) for the openness of society, because neither through education nor through life experience have they met sufficiently convincing proof to indicate such a connection. Another option is that the experts rightly perceive the dominance of other social spheres over the economic one when it comes to their significance for the openness of society. It is possible that both factors had an effect



on the result. In support of the first option is the fact that in education programmes at faculties of economics, in academic discussions on economic policy, and in economic policy itself and its presentation and interpretation in the media, a clear articulation of the liberal and anti-liberal attitude is avoided. The concepts and policy of privatisation and liberalisation are often confused, and many privatisation failures are equated with failures of the market, so that both the theories and the concrete examples which show how an efficient market leads to desirable social impacts are largely unknown (although they do exist).⁵ In support of the latter option is the heritage of the state's running of the economy (centrally-planned economy) which in the 1990s was transformed into a heritage of high taxes and big state spending (in comparison with other countries). The omnipresent state has remained the main characteristic of economic relations, so experts correctly perceive that the concrete influence of the economy (reflected through subsidies and aid to companies, public procurement, etc., in the narrow sense, and also through the functioning of the judiciary in the broader sense) is still much more significant for the openness of society than the relations on private markets.

The same causes can explain another two

attitudes: one about the smaller share of concrete economic topics among the indicators of increasing openness and closedness of society, as well as the one about the dominance of political and legal topics in the "top 10" of the most important factors of economic openness in which the evaluation of performance is in relative terms the weakest (as a reminder, those are: competence, independence and efficiency of the judiciary and the protection of creditors, transparency of privatisation and depoliticising the management of public companies, and setting up a dialogue between the public and the private sectors). According to these results, Croatia is still largely a closed society, because it is fighting the internal infrastructure problems of building an efficient and free market economy (e.g., loosening the grip of the state and its administration, and increasing the quality of public services, such as the judiciary) rather than the concrete economic issues which come into focus only when the basic systemic issues are resolved. From this perspective it is wholly logical that 9 out of 53 indicators of increasing openness are related to EU accession and harmonisation of (the long awaited) legislation, whereas only one indicator is related to the privatisation of PIKs and reducing the tax burden. We may say there is a deficit of concrete indicators.



Consequently, the results of the poll of the sample of experts show an ambivalence of attitudes (the attitude towards the banks and scandals, which some explain as indicators of increasing openness, and others as indicators of increasing closedness), and sometimes their inconsistency (the importance of the protection of market competition ranks high when it is defined in

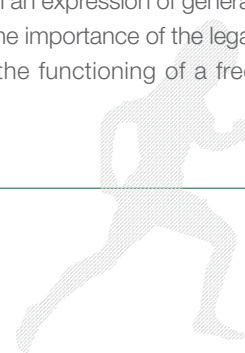
abstract terms, but when defined in a concrete form, the rank of importance is very low). Also, the importance of topics related to international economic openness is ranked very low, whereas particularly for this dimension of openness the result is disastrous in the sample of the general population, which opposes any sale of companies to foreigners. Such an attitude has very probably emerged as a consequence of a

small number of cases where privatisation to foreign partners has been implemented without previous liberalisation and regulation of the market. Such may be the case, for instance, with the privatisation of HT, where the monopolist annuity in fixed telephony has

only (partially) been transferred from the state to private (foreign) hands.

If the hypothesis that aversion to foreign investments was the result of several such privatisation episodes is correct, we arrive at an interesting conclusion: leading a policy which does not take into account the basic principles of the free market and open society leads in the long run to the general public's aversion to these principles, which can create major problems in running all aspects of policies focused on international integration. The general public, and partly also the professional elite, differentiate insufficiently between the concepts and policy of privatisation, liberalisation, and the open market, and equating them makes it impossible to identify the sources of political errors and prolongs the confusion. The observed result only builds upon the long observed consequences of the non-transparent privatisation policy (Štulhofer, 2000). The greatest importance attributed to control, lawfulness and the judiciary in the building of an open society probably still represents more a reaction to the frustration of privatisation than an expression of general understanding of the importance of the legal infrastructure for the functioning of a free market.

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A background image showing the silhouettes of several construction workers standing on a horizontal steel beam. They are holding tools like hammers and wrenches. The background is a blurred view of a construction site with various steel structures.

Conclusion

In an economic sense, Croatia has the features of a partially closed society. This is evident from the small number of respondents who identify an open society with a society "... which has no borders, in which there is completely free movement of persons, goods and capital," and from a great aversion to selling companies to foreigners. The greatest importance attributed to the issues of control, lawfulness and the judiciary arises largely from the demands for the correction of mistakes in privatisation in the past, and not from an understanding of the importance of a suitable legal infrastructure for the functioning of a free market. Consequently, in Croatia the realm of freedom is just being conquered, and this has not yet affected the area of international economic relations. On the internal front this process has begun, but it is still mainly focused on the influence of the state in the economy, whereas the relations on the private markets are not the focus of attention. Among the indicators of increasing openness and closedness, wider economic and non-economic topics dominate, while there is a comparatively small number of more narrowly defined economic topics, such as those related to taxes, state

expenditures and the unequal power of market competitors, which are perceived as indicators of the openness or closedness of society. Finally, the experts assessed that the importance of economic issues for the openness of society is the lowest of the six areas, which means that in Croatia there are (still) no actors in the economic sphere to stimulate the opening of society. Instead of the entrepreneurial elite actively pursuing the idea of a free market, in Croatia there is a dominant model of reaction to the state which is overly large and interlaid with various interests, whereas freedom and the open society are mostly defined through reaction to corruption and clientelism which are profiled through the processes of privatisation and public procurement required by the state. The future development of this study should allow for a methodologically clearer special analysis of international and internal aspects of the openness of society; in addition to the general population and professional elite, the study should also include a representative sample of respondents from the entrepreneurial elite, so that their attitude towards an open society can be examined, as well as their perception of the level of openness/closedness of Croatian society and the potential to become in the future, as a strong interest group, proponents of the idea of a free market and open society.



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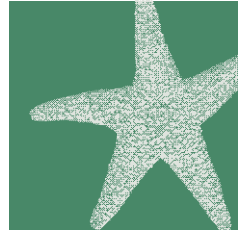
¹ For an attempt at a more detailed explanation of this attitude in domestic literature, see Čučković i Šonje (2004).

² This position can be mitigated to a certain extent by the presumption that respondents understood that this question pertains to state-owned, and not private, companies. Yet, even in this lighter version, which we cannot be sure is correct, based on the general population sample, the answers indicate a worrying inclination towards closing the economy.

³ Language is not a sufficiently precise tool, so that the ranking of general importance might be mixed up with the ranking of the concrete importance on the basis of current problems.

⁴ Although the Žužul case was related to the problem of non-transparency in state subsidies to certain companies, it is probable that the experts evaluated this case primarily through the perspective of political accountability, and not through its economic dimension.

⁵ On "liberalism" in conducting economic policy, see: Šonje i Vujčić (2001).



Introduction

The rule of law is often considered one of the key components of a democratic society, an instrument by which it is ensured that the actions of those in power are in the public interest, that every individual and social group may have their freedoms and rights protected, and that they may accomplish their individual and group goals and interests. Various theoreticians have pointed out that the rule of law contributes to the improvement of stability,¹ freedom,² efficiency,³ utility,⁴ formal justice⁵ and substantive morality.⁶ From the moment the Republic of Croatia gained its independence, the rule of law has been a kind of litmus test of the social and democratic development of Croatia. Therefore the rule of law in this study is recognised as one of the important indicators and generators of an open society, or, alternatively, a closed society.

The rule of law is an extremely difficult concept to define. Its definition and meaning have been the subjects of innumerable scholarly discussions. There are great differences among the British, American, French and German understanding of the concept of the rule of law. Traditionally, there has been a

theoretical clash between two concepts of the rule of law: positivist and substantive. According to the so-called positivist conception, rule of law implies the fulfilment of certain formal criteria related to the enactment and application of the law, irrespective of the ends that a specific law serves, whereas the so-called substantive conception largely equates the rule of law with the notion of justice. In Croatian legal circles, the positivist conception of the rule of law still prevails. However, nowadays, many understand the concept of the rule of law more widely than both the traditional positivist and substantive conceptions. Relying on a centennial tradition, this body of opinion bases the idea of the rule of law on the fact that any exercise of power, private or public, should be limited by the law. From this, two basic requirements of the rule of law are derived: a) the requirement to limit official power - that civil servants may act only in line with stable regulations clearly defined in advance, which limit their discretion and thereby prevent tyranny and arbitrariness, and b) a requirement for the laws to be accessible and clear to those to whom they refer, so they can adjust their behaviour. Therefore, it is considered that the rule of law relies on how and what kind of laws are enacted, the separation of power,

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independence of the judiciary, the apolitical nature of the judiciary, judicial control of executive authorities, access of citizens to the justice system, etc.⁷ This study started from this wider concept of the rule of law, so the degree of an open society in the area of the rule of law was measured by six criteria: a) quality of legislation; b) efficiency of the judicial system; c) availability of legal protection for all citizens; d) independence of the judiciary; e) quality of the control of the work of the judiciary and f) confidence of citizens in the judiciary.

The study was conducted on a group of 125 experts, out of whom only 8 were from the area of law, and with a random and representative sample of 1500 citizens of the Republic of Croatia over 18 years of age. Experts and citizens filled out two different questionnaires, each having separate objectives. The objective of the questionnaire filled out by the legal experts was to create an open society index in the area of the rule of law, and to see the extent to which the current situation in terms of the rule of law affects the level of openness of Croatian society. On the other hand, in the survey of citizens we draw conclusions on the importance given by citizens to the rule of law in attaining an open society, and to what extent, actually, the very concept of the rule of law is understandable to them. Given that the sample of experts is extremely small (only 8), the results of the study should be taken with great reserve, except perhaps in cases

where there is concordance in the assessment of the importance and evaluation of specific items.

The data are presented in this report in four chapters. The first chapter deals with the perception of both experts and the general population on the importance of the rule of law for attaining openness of society. The second chapter explains the five criteria whereby openness in the area of the rule of law was measured in the study. The third chapter describes on the basis of the results of the study the ideal model of the rule of law in an open society (what is more and what is less important for attaining openness in the area of the rule of law). The fourth shows the situation in Croatia in terms of openness and lack of openness of society in the area of the rule of law and tries to explain the biggest deviations from the ideal model.

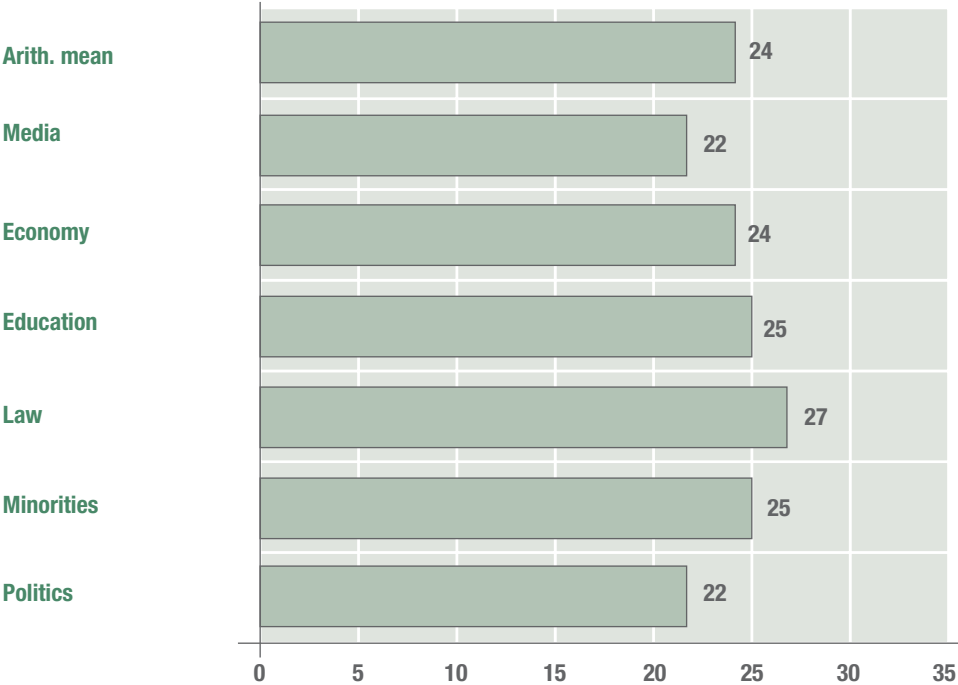
The importance of the rule of law for the openness of society

Experts and citizens in the survey were requested to assess the overall importance for “openness of society” of specific areas (the rights of minorities and marginalised groups, the education system, the rule of law, economic freedoms and entrepreneurship, the media, and the democratic quality of political processes).

The rule of law was rated as the most important dimension for the attainment of openness of society.

Out of all six indicated key dimensions of societal openness, the rule of law was rated as the most important by the experts.⁸ Out of a total of 100 points for the importance of these areas for the overall openness of society, law on average received 24 points.⁹ Interestingly, each of the six groups of experts divided according to their basic fields of expertise rated the rule of law as the most important dimension for the attainment of openness of society (see Figure 1). This is not surprising since the rule of law is to a great extent one of the prerequisites for the attainment of openness of the other key dimensions.

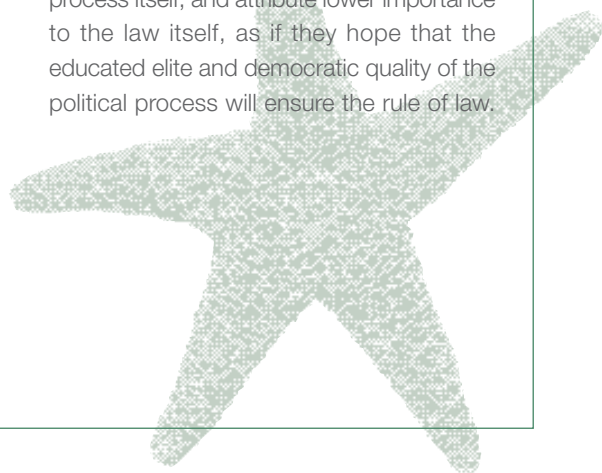
Figure 1 - Assessment of the Importance of the Rule of Law According to the Assessments of Various Groups of Experts



However, the assessment of the importance of the rule of law also has the biggest standard deviation (8.454), which means that there were relatively large differences among individual experts in the assessment of the rule of law for the openness of society. The assessment ranged from 5 to 51 points, which was the largest range in the assessments of all the areas. The biggest differences in the assessment of the importance of the rule of law for the openness of society were among experts in the media (5-50) and experts in minorities (10-50). Surprisingly, experts in minorities attributed such a different importance to the rule of law, since it is specifically the openness of the rule of law which is extremely important for the exercise of minority rights. This may reflect disappointment in the functioning of our legal system in terms of the protection of minority rights.

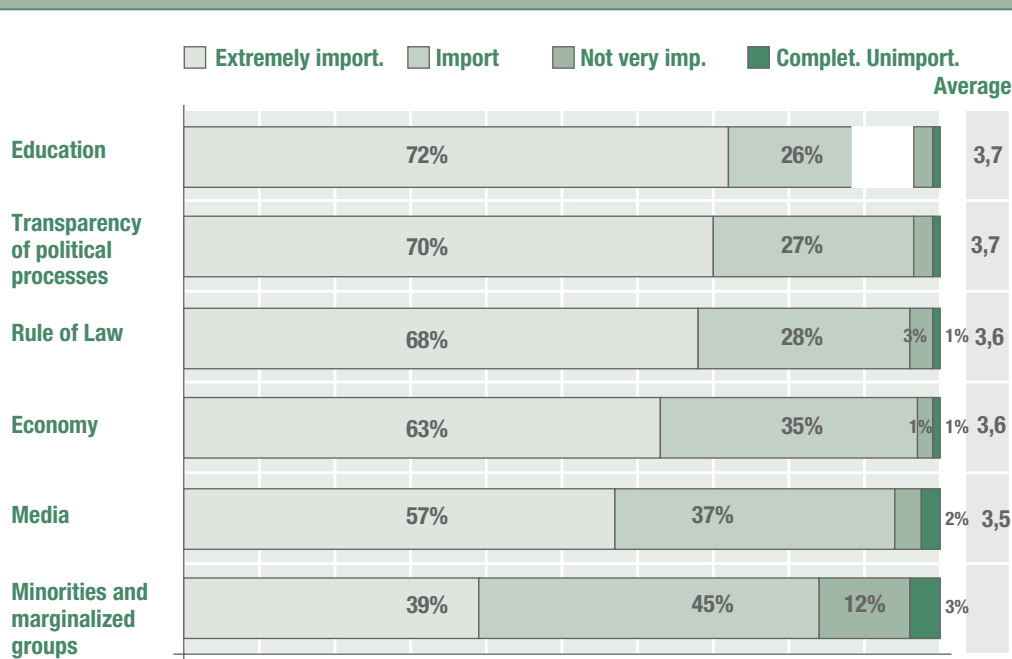
According to the assessment of citizens,¹¹ the rule of law ranks third in terms of importance for the attainment of an open society, behind a high quality education system that is equally open for all, and democratic political decision-making, and before economic rights and freedoms, freedom of the media, and the rights of minorities (see Figure 2).

Consequently, there is disagreement between experts and the general population in ranking the importance of the rule of law in attaining the ideals of an open society. Such ranking of the areas by citizens might reflect the feeling that our society is not really in the true sense a democratic society in which authority and the creation of law would come from the bottom up, from the citizens themselves (the so-called “ascending” model of creating law), consequently serving as a strong mechanism in the hands of citizens to influence social developments, but are imposed from the top down (the so-called “descending” model). Therefore citizens, being unable to affect more strongly the process of the rule of law, and being sceptical about the real relevance of what they think, give advantage in attaining the ideals of an open society to education and the democratic quality of the political process itself, and attribute lower importance to the law itself, as if they hope that the educated elite and democratic quality of the political process will ensure the rule of law.



The study indicates that a certain, quite substantial, number of citizens still does not understand the concept of the rule of law and that further intensive work on raising public awareness in that sense is necessary.

Figure 2 - Assessment by Citizens of the Importance of Social Areas for the Overall Openness of Society



The study indicates that a certain, quite substantial, number of citizens still does not understand the concept of the rule of law and that further intensive work on raising public awareness in that sense is necessary. As many as 30.5% of citizens believe that the secret services must have the right to interrogate someone if they are sure he or

she is guilty; only 58.6% of citizens firmly believe that, if the President of the country asks for a person to be sentenced, the judge does not have to honour such a request; only 27.6% of citizens believe that citizens should have the right to do whatever occurs to them except for the things which are clearly forbidden by law (although the word “clearly”

The famous Fuller's list of the necessary characteristics of the rule of law requires legislation to be general, accessible to all, non-retroactive, understandable, consistent, stable, enforceable, and possible to be complied with.

can be misleading here). The results of those three questions show that there is still a strong influence of the communist past where authority with no separation of power was dominant and where the law was not the only source of determining the limits of the freedom of citizens.


Criteria for the Openness of the Rule of Law - Meaning and Explanations

The degree of an open society in the area of the rule of law was measured by using six criteria: a) high quality legislation; b) efficiency of the judicial system; c) availability of legal protection for all citizens; d) independence of the judiciary; e) quality control of the work of the judiciary, and f) confidence of citizens in the judiciary. Each of these criteria was operationalised in a questionnaire with approximately 10-20 items, and the respondent had to indicate for each item its importance for ideal societal openness and to assess its status in Croatia. In this way, data were obtained for the assessment of the importance of each of the six criteria and a number of items related to each of those

criteria for the implementation of the rule of law, as well as the assessment of the situation with regard to individual criteria in the Republic of Croatia, and also with regard to each of the items for a specific criterion. This section looks at each of the criteria separately.

Quality of Legislation

The famous Fuller's list of the necessary characteristics of the rule of law requires legislation to be general, accessible to all, non-retroactive, understandable, consistent, stable, enforceable, and possible to be complied with.¹² These are mostly requirements related to the manner of enactment of laws and the quality of drafting laws. It is specifically those requirements that are the very basic core of the rule of law. They mainly correspond to the positivists' conception of the rule of law. Therefore, this study also started from the assumption that, in order to attain the rule of law, and thereby openness of society through the rule of law, what is important is a) the very manner of the enactment of laws (their timely enactment, the possibility of all stakeholders to influence the enactment of laws, the access of the public to draft laws and the conducting of public debates on these drafts, leaving enough time from the passing of the law to its implementation so that citizens can



become familiar with the content of the law, the preparation of detailed explanations of draft laws for the purpose of their easier interpretation later), b) the quality of laws (the provisions should be written in a clear language, understandable to all, they should be specific and should not leave legal vacuums or room for various interpretations,¹³ adequate resources should be provided for the implementation of the law and control mechanisms for its implementation should be envisaged, as well as sanctions for lack of compliance, the laws should not be too strict and they should not limit the freedom of citizens unduly, they should regulate all important areas of life and comprehensively regulate the area they are intended for) and c) stability of laws (requirement not to change the laws frequently).¹⁴

In addition, the requirement that the rule of law limits discretionary powers of government presupposes that courts have the authority to decide on the issues of public interest. Therefore, courts in legal systems abiding by the rule of law need to be empowered to have control of compliance of the laws with the Constitution, human rights and other laws, and control of the discretionary powers of the executive branch. This is only partially measured by items such as compliance of

the law with the Constitution, with the requirements for the protection of fundamental human rights, and the mutual harmonisation of laws. Consequently, it would be good to introduce as a separate item in the questionnaire, here or in relation to the criteria measuring efficiency of the judicial system, the readiness of the courts to initiate before the Constitutional Court the issue of constitutionality of specific regulations (Croatian courts are still very reluctant to assume such practice, and in fact they hardly ever do it) and to control the work of executive bodies.

Access of all Citizens to Legal Protection

It is important for the openness of society that all citizens in practice may enjoy legal protection and equality before the court and the law. The study measured equal access to legal protection through the following items: the simplicity of the procedure for initiating court proceedings, the availability of good quality free legal assistance for citizens, the alignment of attorneys' and court tariffs with the purchasing power of citizens to enable them to afford legal protection, the intelligibility of the laws and availability of information brochures on the rights of citizens, the prompt reaction of the State Attorney's Office and

It is important for the openness of society that all citizens in practice may enjoy legal protection and equality before the court and the law.

The control of the quality of work of the judiciary (the courts, state attorneys, attorneys and public notaries) is also important for openness in the sphere of the rule of law.

the Ombudsman in the event of a violation of rights, equal treatment of citizens by judges and the State Attorney's Office and their non-yielding to public pressure, and that laws are not discriminatory towards certain groups. Traditionally, access to legal protection in this form was not considered a component of the rule of law. However, in the last few years it was specifically the access of all citizens to legal protection that has become an important element in the "export" of the rule of law to transition countries.

Quality Control of the Work of the Judiciary

The control of the quality of work of the judiciary (the courts, state attorneys, attorneys and public notaries) is also important for openness in the sphere of the rule of law. There are several ways to control the quality of work of the judiciary (appellate review, civil and criminal responsibility, professional responsibility - abiding by codes of ethics, impeachment, etc.). This study concentrated on control through the evaluation of the work of judges and prosecutors, the system of their promotion, accountability and sanctioning misuse and poor quality work, control of corruption, supervision by the Ministry of Justice of the work of courts (this form of control is very questionable from the

aspect of separation of power, regardless of the existence of "checks and balances", and is actually contrary to the concept of the rule of law, so it should be omitted from the questionnaire), abiding by codes of ethics, and transparency of the work of judges and prosecutors.

Efficiency of the System

In the last twenty years or so, the practice of the European Court of Human Rights with regard to the right to a hearing within a reasonable time referred to in Article 6 of the European Convention on Human Rights has changed the perspective on the efficiency of the judiciary and raised awareness that the efficiency of the judiciary is one of the prerequisites for the implementation of the rule of law and that the legal security of citizens, as well as the equality of citizens before the law and the court, greatly depends on the efficiency of the judiciary. The indicators of efficiency in this study were the duration of the court proceedings, the possibility of manipulating the duration of proceedings, the frequency of the occurrence of the statute of limitations, the efficiency of communication between courts and the administration, and also the efficiency of the work of supporting staff, the regular and efficient execution of court decisions, the existence of alternative

If the judiciary is not autonomous, it cannot control executive authorities.

dispute resolution models, the prompt work of investigation judges, the quality of work of the State Attorney's Office (the high quality preparation of a case, obtaining sufficient evidence, equal treatment of all cases, treating cases seriously).

Independence of the Judiciary

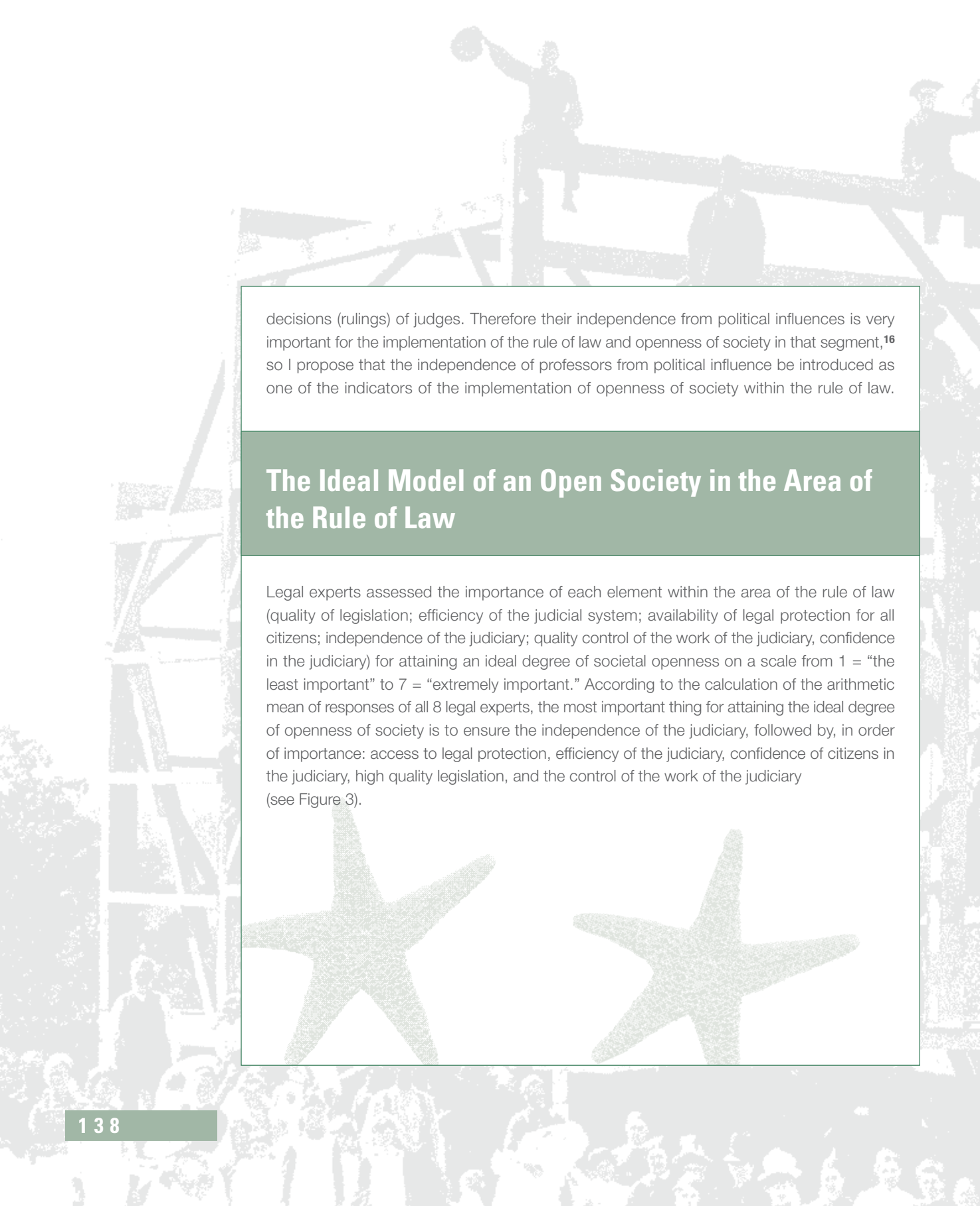
Nowadays, it is the independence of the judiciary that is considered one of the most important elements for the implementation of the rule of law - if the judiciary is not autonomous, it cannot control executive authorities. The independence of the judiciary, on one hand, implies the independence of courts from the influence of parties (primarily indicating that there is no corruption; therefore, the indicator of the low occurrence of corruption in courts, which in the questionnaire is part of the control of the quality of the work of the judiciary, should really be in the part related to the criterion of the independence of the judiciary), executive authorities and "immunity" of courts to various kinds of pressures: political, public, and interest groups. However, we have to be aware that it is impossible to isolate the judges completely from the influences of society and that this, in the long run, would not even be advisable, since their decisions should be consistent with the prevailing social values -

- otherwise the majority in society would not see any sense in complying with these decisions.

On the other hand, discussing the independence of the judiciary implies the recruitment and promotion of judges, prosecutors and other judicial employees exclusively on the basis of their expertise and quality of work. Regardless of the importance attributed to expertise when appointing judges, the political opinion about the candidate and his or her prior behaviour always has a certain bearing. There are attempts to compensate for this by awarding judges tenure for life or by their election by citizens for a fixed term.¹⁵

The independence of lecturers at the faculties of law also has a great influence on the rule of law and openness of society in terms of the rule of law. Professors not only educate future judges, state attorneys and attorneys, but also greatly affect the creating of the laws. Indeed, they are often their main creators. Moreover, the articles and books they publish not infrequently affect the

Professors not only educate future judges, state attorneys and attorneys, but also greatly affect the creating of the laws. Indeed, they are often their main creators.



decisions (rulings) of judges. Therefore their independence from political influences is very important for the implementation of the rule of law and openness of society in that segment,¹⁶ so I propose that the independence of professors from political influence be introduced as one of the indicators of the implementation of openness of society within the rule of law.

The Ideal Model of an Open Society in the Area of the Rule of Law

Legal experts assessed the importance of each element within the area of the rule of law (quality of legislation; efficiency of the judicial system; availability of legal protection for all citizens; independence of the judiciary; quality control of the work of the judiciary, confidence in the judiciary) for attaining an ideal degree of societal openness on a scale from 1 = “the least important” to 7 = “extremely important.” According to the calculation of the arithmetic mean of responses of all 8 legal experts, the most important thing for attaining the ideal degree of openness of society is to ensure the independence of the judiciary, followed by, in order of importance: access to legal protection, efficiency of the judiciary, confidence of citizens in the judiciary, high quality legislation, and the control of the work of the judiciary (see Figure 3).



Figure 3 - Assessment by Legal Experts of the Importance of Specific Elements within the Rule of Law for the Openness of Society

LAW expresses the arithmetic mean of the assessment of the importance for openness of all items of the rule of law (the sum of all items divided by the number of items). The rest are arithmetic means of the assessment of importance of specific elements within the rule of law for attaining the ideal degree of openness of society on a scale from 1 = “the least important” to 7 = “extremely important”





According to the assessment of experts, in terms of the importance for attaining an ideal openness of society, independence of the judiciary stands out, whereas control of the work of the judiciary stands out in terms of its relative lack of importance. Such an assessment should not be surprising, since control of the work of the judiciary represents a kind of challenge for the preservation of

the independence of the judiciary, and it is considered that specific forms of control of the judiciary actually interfere with and diminish its independence. Moreover, courts in the Republic of Croatia tend to assess their work extremely positively, and among professionals there is a certain resistance to introducing various forms

of control, which is most frequently justified by the need to ensure the independence of the judiciary. Such views are probably partially reflected in the results of this study, so the independence of the judiciary and quality control of the work of the judiciary are on opposite poles of the scale of importance. It would be interesting to see how citizens

would assess these elements in terms of their importance for attaining societal openness (unfortunately, this was not done in this study and, although statisticians stress that this would be comparing like with unlike, it still appears that this should definitely be included in future studies). I suppose that citizens would perceive the control of the work of the judiciary as far more important for attaining openness than the legal experts.

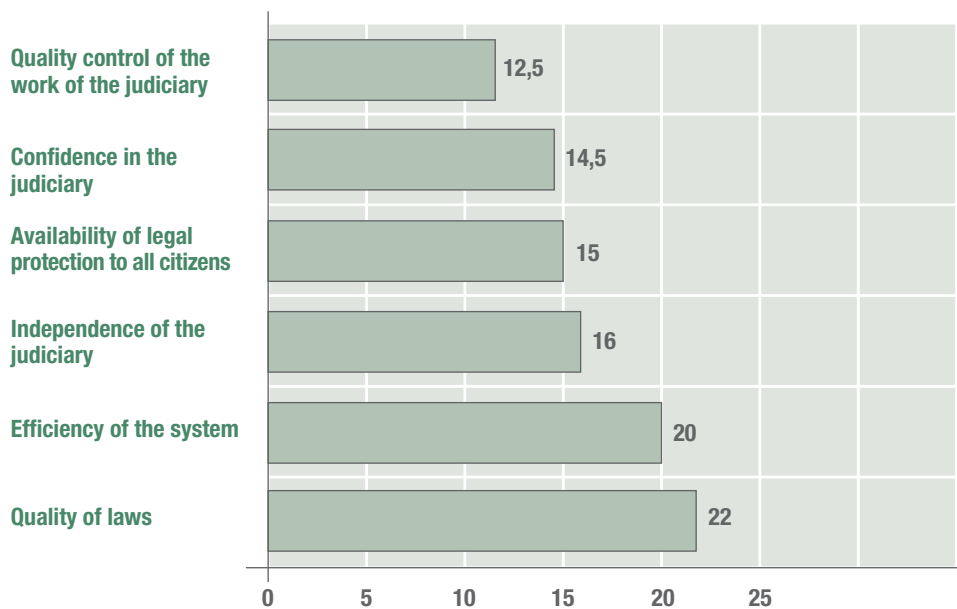
The remaining four elements came close together in the assessment of their importance for attaining an ideal openness of society.

At the end of the whole study the legal experts were asked to assign 100 points to six elements in the area of the rule of law according to how important, in their opinion, a specific element was for the overall openness of society. In response to that particular question, experts attributed the greatest importance to the quality of legislation (see Figure 4).

Courts in the Republic of Croatia tend to assess their work extremely positively, and among professionals there is a certain resistance to introducing various forms of control, which is most frequently justified by the need to ensure the independence of the judiciary.



Figure 4 - Importance of all the Criteria



This might lead to the conclusion that among experts there is a consensus about the lowest importance of control of the quality of the work of the judiciary for the openness of society. However, particularly in the assessment of the importance of the quality of the work of the judiciary, both in answer to the first and second question, there was great variability among the eight legal

experts.¹⁷ This means that the experts did not agree among themselves about the importance of that element. I suppose that the differences in assessments were to a great extent a consequence of the professional circles of the experts (judges, prosecutors and professors most probably valued this criteria quite differently).

A comparison of the responses to the two

According to the assessments of legal experts, the situation in the country in the area of the rule of law is extremely poor in terms of the efficiency of the judiciary and confidence of citizens in the judiciary.

questions indicated above show a strikingly different assessment of the importance of the “quality of legislation” for the openness of society (compare Figures 3 and 4). This difference might possibly be explained by the fact that, in response to the first question, legal experts concentrated more on the effect of a specific element (criterion) on the openness of society and that, in providing ratings, they were under the influence of the items which they had just rated within a specific element (criterion). In response to the second question it seems to me that the experts concentrated more on the elements (criteria) which contribute to the implementation of the rule of law, and not so much on their importance for the openness of society. A number of the items relating to the quality of laws are actually traditionally considered as the most important elements of the rule of law. This traditional understanding of the rule of law is still dominant in the Republic of Croatia. Even so, it is far narrower than the notion used in this study. It appears that this might be the reason for the greatest importance being attributed to the quality of legislation in answers to the second question. If we had a bigger sample of respondents, it might be good to pay attention to the legal

circle they come from (whether judges, state attorneys or professors). It is possible that some (the judges) might place higher value on the independence of judiciary, and others (the professors) on the quality of the legislation.

Assessment of the Situation of the Rule of Law in Croatia


Legal experts were asked to assess each item within a certain element of the rule of law in terms of the situation in Croatia on a scale from 1 = “is not present” to 7 = “is markedly present.” Since only 8 legal experts filled out the questionnaires on the basis of the interpretation of this material, it is not possible to make generalisations about the situation in the country, or draw conclusions on the implications of those results for future work. Still, even the results of such a small sample encourage reflection and are worth considering.

According to the assessments of legal experts, the situation in the country in the area of the rule of law is extremely poor in terms of the efficiency of the judiciary and confidence of citizens in the judiciary:¹⁸

Figure 5 - Assessment of the situation of the rule of law in Croatia

Arithmetic mean of all the items of the specific elements (the sum of responses to all items divided by the number of items within a specific element) rated on a scale from 1 = "not present at all" to 7 = "markedly present."






Croatia should pay a great deal of attention to further strengthening the independence of the judiciary, both by strengthening independence from the influence of executive authorities, political pressures, vested interests, and through the recruitment and promotion of judges and other judicial employees exclusively on the basis of their expertise and quality of work.

Such an assessment of the experts regarding the situation of the efficiency of the judiciary is consistent with the study of the European Commission for the Efficiency of Justice (CEPEJ), carried out recently.¹⁹ Also, some surveys conducted in Croatia indicate that citizens have low or no confidence in Croatian courts, mostly due to the length of the proceedings.²⁰ Legal experts rated the following as particularly problematic within the efficiency of the judiciary: frequent occurrence of the statute of limitations due to the inefficiency of the courts, irrationally long duration of court proceedings, frequent remanding by a higher-instance court to a lower-instance court for the reopening of proceedings due to errors, and the lack of models of alternative dispute resolution. They proposed a number of changes necessary to increase the efficiency of the judiciary, including the introduction of mediation, the establishment of smaller specialised and thereby more qualified courts, revising laws to speed up court proceedings, the need to introduce performance-based salaries or incentives, drawing up a systematic, comprehensive and realistic action plan for the reform of the judicial sector, increasing the professionalism of public administration and increasing the capacities of local government and self-government. In relation

to the need to increase confidence in the judiciary, the following are proposed: intensifying the sanctioning of illegal behaviour such as unlawful building, strengthening control mechanisms of the rule of law system, and accelerating the process of transition from a communist system of values to the system of values of western democracies.

According to the assessment of experts, the independence of the judiciary was the most important element in the ideal model of an open society in the area of the rule of law, whereas there is quite a poor assessment of the situation in Croatia in terms of the independence of the judiciary. Therefore, Croatia should pay a great deal of attention to further strengthening the independence of the judiciary, both by strengthening independence from the influence of executive authorities, political pressures, vested interests, and through the recruitment and promotion of judges and other judicial employees exclusively on the basis of their expertise and quality of work.

The situation in Croatia in terms of access to legal protection is rated somewhat better than the situation in terms of the independence of the judiciary, but still quite bad. Overly high attorneys' tariffs were rated



as particularly problematic, as well as the lack of printed material about various rights of citizens, the slowness of the reactions of the State Attorney's Office in the event of the violation of someone's rights,²¹ unequal treatment of cases in the State Attorney's Office as a result of power or age, and the yielding of judges to public pressure in cases which attract great public interest.

The best rated was the situation related to the quality of laws and the quality control of the work of the judiciary, but here again the ranks were below the mean value. Actually, if we take a close look at some items rated within the quality control of the work of the judiciary, except for corruption (which was rated as relatively low) and the passing of decisions irrespective of the reputation of the lower-instance court judge whose decision is being considered, the situation is quite poor. The system is not transparent,²² there is no adequate evaluation of judges, there are no clear criteria for promotion, and neither is quality the basic criterion for promotion,²³ there are no sanctions for poor performance, responsibility is not taken for one's own work, and the code of ethics of the profession are not sufficiently developed. One of the proposals to improve the quality control of judges' work was to tie the system of rewards

to performance. This could, for instance, be done through the introduction of end-of-year bonuses which would be awarded on the basis of a performance assessment.

As far as the quality of enacting laws is concerned, the situation in Croatia is weaker in terms of the manner of enacting laws (the biggest problems are: insufficient possibility of interest groups to affect the enactment of laws, draft laws are not sufficiently available to the general public,²⁴ not enough time is allowed for public debate on the draft laws, insufficiently good explanations are provided when draft laws are prepared, sufficient funds are not provided for their implementation) than in terms of their quality (where the biggest deficiencies are in the lack of mutual harmonisation of laws and the excessive number of legal vacuums). In their responses to the questionnaire, the experts (and this does not only relate to legal experts) mentioned the following recommendations for the improvement of the quality of legislation: faster enactment of essential laws, preventing laws from changing too frequently, the implementation of the principle of the separation of power, increasing the quality of the enactment of laws (transparency of the consultative process, application of European nomotechnical standards), greater

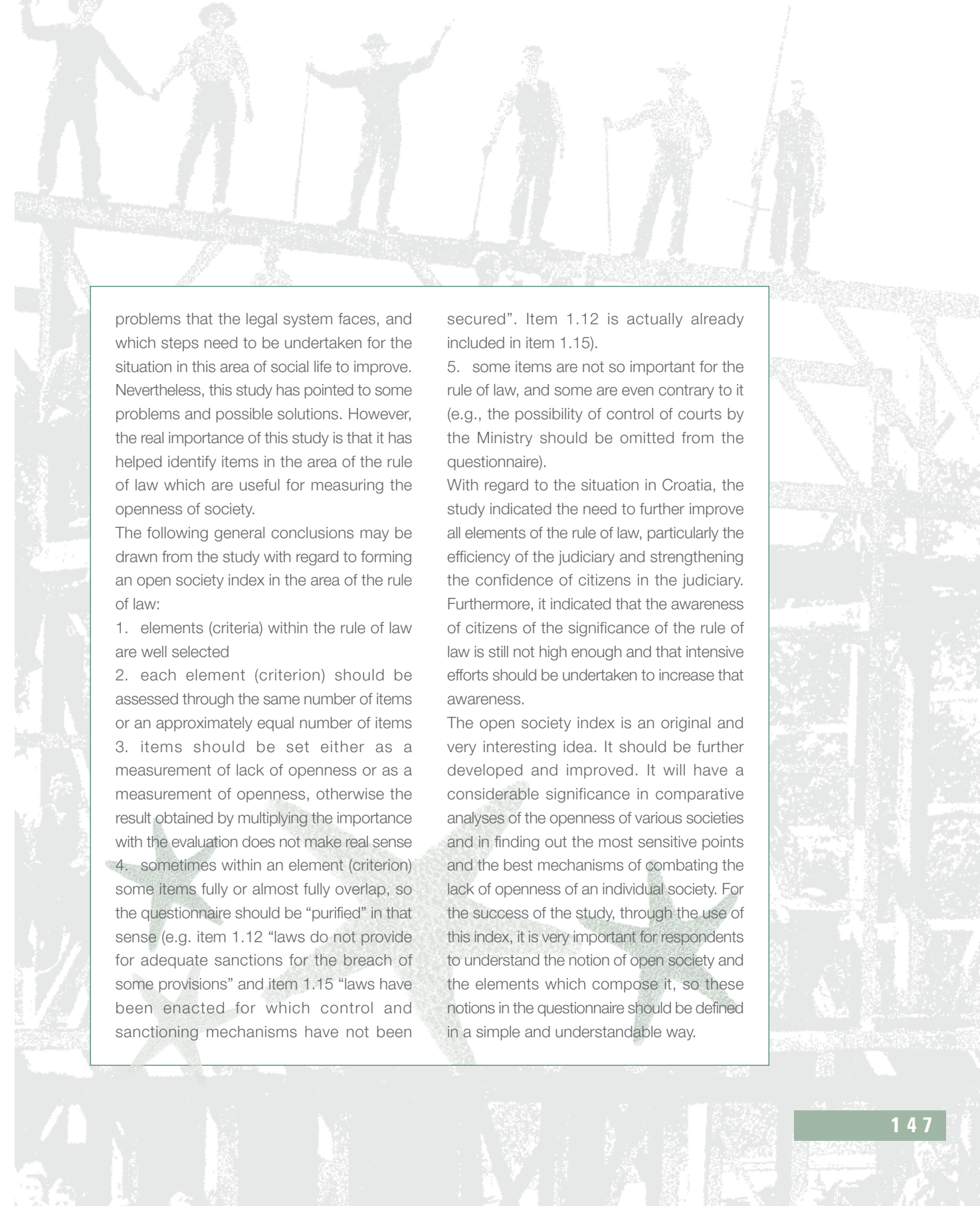
influence of and more consultations with relevant professionals when laws are enacted, including those who implement the laws in practice.

However, despite such a negative picture of the situation in the area of the rule of law, experts quote some examples which show that in this segment some moves have been made towards greater openness of society. For instance, in May 2004 strategic guidelines for the reform of the judiciary were made, which are supposed to contribute to increasing its efficiency. Both the courts and the State Attorney's Office set as one of their respective priorities a reduction in the backlog of cases. Confidence in the judiciary was strengthened through the demolition of illegally built houses in the zone below Sljeme near Zagreb and in Dalmatia, court proceedings against Ljubomir Čučić, the former ambassador to Belgium, for domestic violence, acquittal in the case of the Severina lawsuit, the quashing by the Supreme Court of the Republic of Croatia of the judgement of the first-instance court acquitting eight former members of the military police of charges of war crimes over civilians, mostly of Serb nationality, in the Lora military prison in Split in 1992. Emphasis was made of the independent position of the Constitutional

Court in comparison with the previous period. Several disciplinary and criminal proceedings against judges were conducted for abuse of office. Ongoing is the work on the draft Courts Act, which should provide for clear criteria for the promotion of judges, requirements for the permanent education of judges, and assessment of judges' performance. All this contributes to enhancing the quality control of the work of judges, but also their efficiency. In spite of these positive examples, the rule of law comes immediately after transparency of institutions in the assessment which evaluates whether there was an improvement or deterioration in that sphere (only 12 experts out of 68 who responded to that question thought there was an improvement).

Conclusion

Due to a small sample of experts, relevant conclusions cannot be made on the basis of this study about how far the rule of law is established in everyday social life, how far individuals and social groups may exercise their rights and protect their interests and implement their initiatives through legal institutions, about the most important



problems that the legal system faces, and which steps need to be undertaken for the situation in this area of social life to improve. Nevertheless, this study has pointed to some problems and possible solutions. However, the real importance of this study is that it has helped identify items in the area of the rule of law which are useful for measuring the openness of society.

The following general conclusions may be drawn from the study with regard to forming an open society index in the area of the rule of law:

1. elements (criteria) within the rule of law are well selected
2. each element (criterion) should be assessed through the same number of items or an approximately equal number of items
3. items should be set either as a measurement of lack of openness or as a measurement of openness, otherwise the result obtained by multiplying the importance with the evaluation does not make real sense
4. sometimes within an element (criterion) some items fully or almost fully overlap, so the questionnaire should be "purified" in that sense (e.g. item 1.12 "laws do not provide for adequate sanctions for the breach of some provisions" and item 1.15 "laws have been enacted for which control and sanctioning mechanisms have not been

secured". Item 1.12 is actually already included in item 1.15).

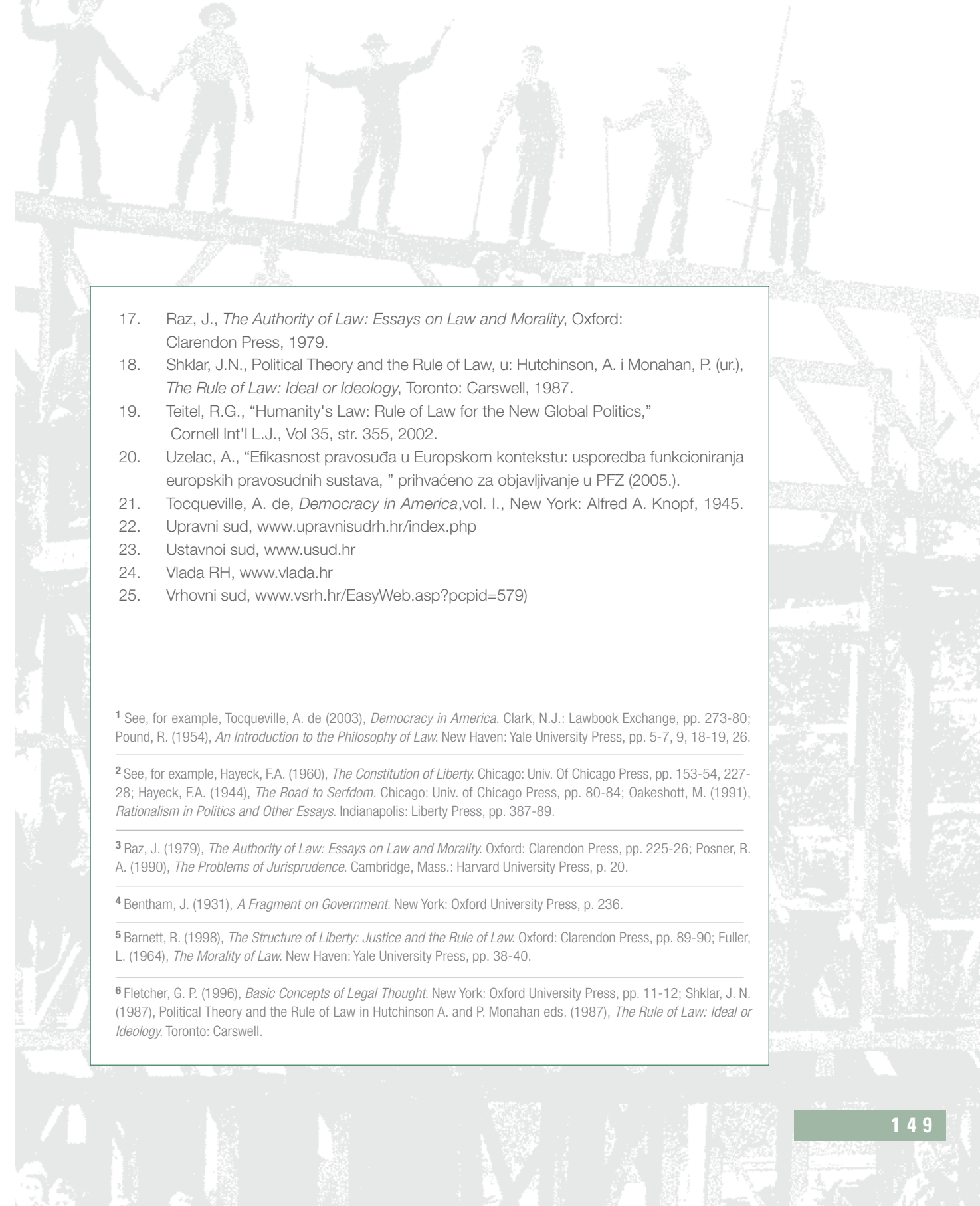
5. some items are not so important for the rule of law, and some are even contrary to it (e.g., the possibility of control of courts by the Ministry should be omitted from the questionnaire).

With regard to the situation in Croatia, the study indicated the need to further improve all elements of the rule of law, particularly the efficiency of the judiciary and strengthening the confidence of citizens in the judiciary. Furthermore, it indicated that the awareness of citizens of the significance of the rule of law is still not high enough and that intensive efforts should be undertaken to increase that awareness.

The open society index is an original and very interesting idea. It should be further developed and improved. It will have a considerable significance in comparative analyses of the openness of various societies and in finding out the most sensitive points and the best mechanisms of combating the lack of openness of an individual society. For the success of the study, through the use of this index, it is very important for respondents to understand the notion of open society and the elements which compose it, so these notions in the questionnaire should be defined in a simple and understandable way.

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⁸ 110 of them, out of whom there were only 8 from the legal area, 12 experts for politics, 30 for minorities, 26 for education, 19 for the economy, and 23 for the media.

⁹ The law is followed by politics and education with 17 points each, the media with 16, minorities with 15 and the economy with 12 points.

¹⁰ It was followed by the media with a range of points from 4 to 40, and then education with a range of points from 5 to 40.

¹¹ Respondents from the general population were asked to assess, on a scale from 1 (completely unimportant) to 5 (extremely important), the importance of each of the six social areas for overall openness of society, so that their assessment could be compared to the assessment of experts.

¹² Fuller, *supra* note 5, pp. 33-94.

¹³ These requirements arise from the principle of legality.

¹⁴ Of course, those requirements should be relativised to a certain extent. Laws are often written so that they are unclear to ordinary citizens without an attorney. Sometimes it is difficult to find provisions for citizens which relate to their case, etc.

¹⁵ See Cappelletti, M. (1989), *The Judicial Process in a Comparative Perspective*. Oxford: Clarendon Press, pp. 104-113.

¹⁶ See in this sense Gordon, R. W. (1988), *The Independence of Lawyers*, B.U. L. REV., Vol. 68 pp. 1.

¹⁷ In response to the first question, variability was the highest and accounted for 21%, and in response to the second question there was the second largest standard deviation (5.24).

¹⁸ Those two elements were rated the lowest out of all the elements within all the areas.

¹⁹ See Uzelac A. (2005), Efikasnost pravosuđa u europskom kontekstu: usporedba funkcioniranja europskih pravosudnih sustava, accepted for publication in Collected Papers of Zagreb Law School. CEPEJ was established on 18 September 2002 as a permanent body of the Council of Europe, and consists of experts from 46 member states. Its basic tasks are: a comparative analysis of the results of various judicial systems; development of joint statistical criteria and other means of evaluation; analysis of problematic areas in which the situation should be improved. The area of work of CEPEJ includes civil, administrative and criminal justice.

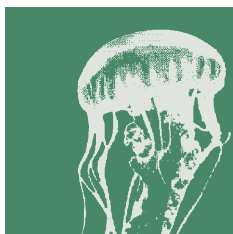
²⁰ For instance, some surveys conducted in Croatia show that courts are among the least distinguished social institutions - or even the institutions in which the citizens have the least confidence. In a study conducted in 2002, the courts received the least of public trust: it turned out that the citizens appreciate the church or private entrepreneurship more than three times as much as the judiciary, and in comparison with courts, confidence in the university, the President of the country, or the army is more than twice as high. See Institute for Democracy and Electoral Assistance (IDEA) - Regional Survey of Public Agenda, 2002, <http://archive.idea.int/balkans>. In another survey, responding to the question about which institutions they would eradicate corruption from first, citizens indicated to the largest extent the judiciary and health care. Transparency International Report. V. Kregar, J. (2005), "Corruption in the Judiciary," in: Lalić ed. (2002), *Croatian Judiciary: Lessons and Perspectives*. Zagreb, pp. 323-350. According to Uzelac, id., p. 3.

²¹ Although in the last year it was specifically in this area within the State Attorney's Office that a great deal has been done, the data have probably not reached the public yet.

²² For the time being the rulings available on the internet are only those of the Constitutional Court (www.usud.hr), the Supreme Court (www.vsrh.hr/EasyWeb.asp?pcpid=579) and the Administrative Court (www.upravisudrh.hr/index.php). Rulings of all courts should be made available to the public. This is also a kind of quality control of the work of courts.

²³ Underway is the preparation of the law which should regulate the permanent training of judges, their evaluation and the criteria for their promotion.

²⁴ Draft laws that the Government has discussed can be found at www.vlada.hr under Government Sessions.



Transparency and the Attained Degree of Democracy in Political Processes

Nenad Zakošek

With the so-called third wave of democratisation,¹ which surged through all post-socialist countries of Eastern Europe, not only did the number of democratic regimes in the world increase, but there also emerged comparative studies of democracy, of discourse on its various characteristics, as well as hypotheses as to its genesis and how it should be maintained. In this context, on one hand, there emerged a need to differentiate between various notions of democracy and to create typologies - in the broadest sense, as related to democratic regimes - which would also encompass a whole array of transitory or mixed regimes to be found in so-called damaged or defective democracies.² Such typologies and elaborate criteria of democracy resulted, on the other hand, in attempts to express the quality of democracy numerically and thereby make comparisons of various democratic regimes easier to handle. Synthetic indexes of the degree of democratic development in a democratic society and the realisation of human rights aim to achieve this goal. The best known such index is compiled by the American organisation Freedom House and has become the principal reference not only for numerous scientists, but also for political actors and for decision makers in international politics. The Bertelsmann transformation

index, which measures progress made by transitional regimes, is of a more recent date, but is similar to the Freedom House index.³

It is in this light, in my judgement, that the open society index should be seen. The project can be compared to some already existing indexes of the attained degree of democracy, but it is at the same time more ambitious and comprehensive as it also aims to embrace those social spheres which have not been covered by other studies. Even in a more conceptually complex index, however, the political aspect would be of major, possibly of paramount, importance, which is to say quite simply that in transitional societies like that of Croatia politics plays a greater role than it normally does in more advanced democratic societies typified by powerful economic institutions and forces, and by a variegated and autonomous civil society. Political processes in transformational societies condition the forming of relevant forces and institutions, redistribute economic resources, and have an impact on the changes and adjustment of political culture and civil society. Hence, changes in the political system determine the degree of openness, or lack of openness, in a society. We should bear these remarks in mind before we commence interpreting the collected data.

Dimensions of openness, lack of openness in a society; relationship between politics and five other dimensions

On the basis of a preliminary discussion of the open society project committee, six areas or dimensions of social life were deemed instrumental for societal openness: politics, the status of minority groups, the rule of law, the educational system, the economic system, and the media. Through a survey of experts, data were obtained showing the relationship between different dimensions of social life with regard to the influence they have on the degree of societal openness.

Clearly set apart as the most important dimension is the rule of law (average value of 24.1), for it seems to have as much as 50 percent more influence than any of four other dimensions of roughly the same degree of importance: politics (16.8), education (16.6), the media (15.8), and status of minorities (14.7). The dimension with the least influence on the openness of society, according to experts, is the economic system (12.2). The degree of influence it exerts on social life, compared to the cluster of four better ranked

dimensions, is one third weaker, and, compared to the rule of law, is weaker by half. Such rankings of the six dimensions of social life deserve a brief comment.

In spite of the introductory thesis on the importance of the political sphere in transitional societies, the primacy given by experts to the rule of law is hardly surprising. The transition from an autocratic to a democratic system took place in post-socialist societies of Eastern Europe in conditions which were very specific and considerably different from the conditions which could be found in different epochs and different parts of the world:⁴

- A high degree of democratic involvement: a general right to vote as a self-evident standard (including women's right to vote), a relatively low institutional threshold for gaining entry into representational bodies (proportional electoral systems or combined systems with an important proportional segment), a relatively high degree of education of the population that allows for broad participation and understanding of political processes.
- Simultaneity of essential transitional processes: a simultaneous transformation from an autocratic to a democratic system,

from a centrally planned to a free market economy, and oftentimes the creation of a national state. In such conditions, political and social elites have access to considerable economic resources which they may use so as to achieve particular goals. Then there are the challenges of populism and clientelism, which may bring into question the transition into democracy and may potentially pose a threat in the shape of various semi-authoritarian transitional regimes.

- The process of building nation states are burdened with conflicts which can be resolved only by building strong and legitimate institutions (which will, among other things, regulate the relationships of ethnic minorities and minorities).

All these characteristics imply that constitutional deficiencies and deficiencies in the sphere of legality and the rule of law are the main obstructions to a successful democratic and economic transition⁵ and that they endanger the attainment of a satisfactory degree of societal openness in other studied dimensions as well (the media, minorities, education). The study at hand has recognised this circumstance. It is indicative that the rule of law has not only been defined as the most important dimension in the

general sample, but also in each of the six subgroups of the general sample: in no sphere of interest have experts given precedence to their personal sphere of interest over the rule of law.

On the other hand, something should be said about the not particularly high rating of the economic dimension of societal openness. One may assume that the economic dimension would be held in much higher esteem in a society with a developed market economy (and perhaps in a transitional society with a very liberal economy, like that of Estonia). Putting the economic dimension in last place is probably the result of a specific socialist inheritance, or of path-dependency: not the economy, but the legal state, democratic politics, the pluralistic media, institutional protection of minorities and an open educational system are by and large perceived to be the preconditions for an open society. The economy has in transitional societies been principally marked by a predatory brand of capitalism and is therefore perceived as a threat to social openness.

Aspects of the attained degree of democracy and transparency of politics

There are six specific indicators of the attained degree of democracy in the sphere of politics: degree of participation and vertical openness, degree of control and openness, transparency/access to information, degree of responsibility, degree of autonomy, and professionalism and rationality. The first indicator, democratic participation, is one of the central criteria of the attained degree of democracy, as well as one of the central issues relevant to the theory of democracy.⁶ One does not speak here merely of ensuring formal preconditions for democratic participation, but of establishing numerous channels and procedures so that citizens may effectively become involved in political processes, on both the national and local level. In politics it is the second indicator, the degree of control and legality, which may be seen as the counterpart to the rule of law dimension on the social level. This indicator encompasses, on one hand, those constitutional and legal institutions which are responsible for limiting power (ranging from strictly respecting the division of power to establishing the institutes whose responsibility

would be to monitor the work of potentially repressive state apparatuses), and, on the other, culturally valuable and behavioural prerequisites of a democratically institutionalised policy (absence of corruption, responsible political elites, legal safety). The third indicator, the degree of transparency/access to information, is related to the existence of civil public life as an important component of democratic politics - whereby one is to assume that citizens and the media have the ability to monitor political officials and institutions, that they possess relevant information and that all decision making processes within state bodies on all political levels are made transparent. The fourth indicator, the degree of responsibility, describes the degree of responsiveness of state organs and political officials regarding citizens' wishes. On one hand, the fourth indicator assesses the extent to which the state is at the service of its citizens, and, on the other, the degree of responsibility attained by political elites. The fifth indicator, the degree of autonomy, has essentially to do with the functioning of the division of power, with the system of checks and balances and inter-institutional control; and, in a broader sense, along with aiming to diminish the importance of partisan politics in public institutions, with the degree of independence attained by the public administration as well

as with the political independence of the most important social institutions (the media, institutions of organised interest). Lastly, the sixth indicator, the degree of professionalism and rationality, has to do with the ability of political elites and citizens to overcome their prejudicial beliefs and forsake their short-term interests while making political decisions or participating in public debates. It is important to mention that there is no strict separation between the six indicators, but that they interweave and are partially interfused: for instance, some questionnaire items related to the independence of key state organs (5th dimension) are also an important institutional foothold for the realisation of control and legality of political processes (2nd dimension).

The importance of certain indicators as established through the survey of experts is shown in Table 1.

Table 1 - The importance of indicators of various aspects of openness in the political sphere

	Mean	SD	Median	Min	Max
The degree of participation and vertical openness	14,50	4,54	15,0	10	25
The degree of control and legality	23,17	6,28	20,0	18	25
Transparency, access to information	18,42	3,82	20,0	10	25
Degree of responsibility	16,08	2,87	15,0	10	20
Degree of autonomy	15,67	4,56	15,0	5	25
Degree of professionalism and rationality	12,17	2,69	10,0	10	16

The inter-relation between different criteria of openness of political processes is in keeping with the previous assessment of the six dimensions of societal openness, which puts an accent on the dimensions of legality and rule of law. Within the political dimension, such institutional and other instruments as would ensure legality and control over political elites claim a one-sided primacy in relation to other dimensions. The ranking of these criteria - access to information, responsibility and autonomy - is to a large measure the result of a lack of confidence in the activities of political elites and of a generally held conviction that the prevention of the abuse of power and the ensuring of democracy may only be reached by establishing solid institutional control mechanisms, transparency in the work of political bodies and high public awareness. The low ranking of the degree of participation in and the vertical openness of the political system dimension might, to some extent, come as a surprise, but this can be explained by the already posited hypothesis that the democratisation of post-socialist societies takes place in conditions of maximum democratic openness and participation (no single social group is denied their right to political participation, as was often the case in the early days of western liberal democracies), and the main political

problems are the abuse of power, feebleness of public institutions and the accumulation of non-transparent political and social power. Finally, the fact that the professionalism and rationality criterion is ranked last is at least partially a consequence of the absence of sufficiently elaborate measuring instruments, a fact which should not be dismissed in the course of the final evaluation of this study.

The ideal model of democratic, transparent politics

The six criteria of openness of political processes are made operational through a number of measuring instruments, or questionnaire items: the greatest number of items is encompassed by the participation and vertical openness criterion (20), and the smallest number by the criteria of autonomy on one hand and professionalism and rationality on the other (8 each). The research results also confirm that there exists an imbalance between measuring instruments: in each of the criteria, the degree of importance of various items varies considerably. Table 2 shows the arithmetic mean of each item.

Table 2 - Arithmetic mean of the indicators of openness in the dimension of politics

	Mean
Participation and vertical openness	5,93
Control and legality	6,93
Transparency, access to information	6,18
Responsibility	5,84
Autonomy	5,67
Professionalism and rationality	5,67

It can be seen that the ranking of the six indicators of political openness on the basis of the average importance of various questionnaire items is somewhat different from the previously shown ranking of the six dimensions. The first two criteria, that of control and legality and that of transparency/access to information, also came first and second respectively, but coming third is the participation and vertical openness criterion (previously ranked fifth in the order of importance), while the autonomy and professionalism and rationality criterion share the last, fifth place. This disparity, however, is of no paramount importance as far as the interpretation of the inter-relations

of the six criteria of the political openness index is concerned, for it simply manifests the inaccuracy of the measuring instruments or the inadequacy of some of the items used in the questionnaire (which have accordingly been labelled as being less important). Nonetheless, this should be kept in mind while evaluating the thus conducted study or while considering how to improve the questionnaire.

Let us now look into precisely which criteria (questionnaire items) in each of the six criteria were evaluated as the most important (on a scale from 1 to 7).

In the participation and vertical openness dimension the situation is as follows:

- There is a general readiness of key political institutions to act in a democratic fashion

6.58

- Can citizens viably realise their interests by having recourse to institutions of local government?

6.50

- Existence of institutional channels for the efficient forwarding of citizens' suggestions

6.33

- The general social climate supports the request of the general public that it be granted a right to participate in political processes

6.33

- Towns and municipalities have enough authority and can palpably influence /improve the quality of life of its citizens

6.25

- The state consults with the local and regional government while making decisions relevant to the functioning of the local government

6.25

What do these rankings show? A portion of the most important criteria of the attained degree of democracy has a direct relationship

with the elements of political culture and behavioural patterns: the attained degree of democracy of political elites, a social climate that would stress the importance of political participation and is ever in search of mechanisms which enable citizens to take part in political life. The other portion of criteria is related directly to the preferred institutional channels of participation, on both the local and national level, that is, to those mechanisms which ensure the efficiency of the local government as well as its influence on the national government as far as questions of local interest are concerned.

In the criteria of control and legality, the highest ranked items are as follows:

- The general social climate continually insists on control over political processes

6.83

- Efficiency of mechanisms which control the work of the state administration

6.75

- Quality control over the work of secret service agencies

6.67

- Efficient fight against corruption arising from abuse of political function

6.67

- There is no corruption in the civil service

6.67

- There is no corruption in local government 6.67

A general social climate which would continually exert public pressure on political officials and demand that they be controlled has been deemed the most important factor in the control and legality criterion. Other top ranked items also received very high marks (the average mark of every single one of them is very close to the maximum mark, like that of every single preceding item). These include state administration and secret service control mechanisms. Equally highly ranked is the absence of corruption in political institutions on both the national and local level.

In the criterion of transparency and access to information the following items were deemed the most important:

- The existence of independent and well-informed political public media 6.75
- A general social climate where the general public intensively and continuously insists on the transparency of the political decision making process 6.58
- Important social and political decisions are not made behind closed doors, away from

the public eye 6.50

- Journalists experience no difficulty in obtaining information from relevant state bodies 6.50
- Citizens experience no difficulty in obtaining information from relevant state bodies 6.50
- Journalists and citizens experience no difficulty in obtaining information from local government bodies 6.33
- Citizens may monitor the most crucial decision making processes 6.33

A type of social climate benevolent to requests that political processes be made transparent is again very highly ranked, and the only higher ranked item has to do with the independence and informedness of the media. All other highly ranked items are related to various aspects of transparency in the activity of political elites and the accessibility of information on both the national and local level.

In the criterion of political responsibility, special accent has been placed on the following prerequisites of social openness:

• A general social climate where the general public intensively and continuously demands that principal actors in public life act in a responsible manner 6.45

• The state administration is efficient in providing services for its citizens 6.25

• The Government is at the service of its citizens, and behaves accordingly 6.25

• Government officials and members of parliament are ready and willing to resign in the event of ethical transgression which is not subject to legal prosecution 6.17

• Members of parliament conduct their work seriously and responsibly 6.17

Here it is apparent that the highest average marks given to the importance of indicators of responsibility in politics are lower than in the preceding dimensions. The accented items have to do with the general social position towards responsibility, with defining the state administration as a public service for citizens, and with the presence of a type of political ethics whose objective it is to set the guidelines for the activities of the political elite.

In the autonomy criterion most items are

highly marked, in the following manner:

• Independence of the judiciary from the Government 6.75

• Political independence of the Constitutional Court 6.75

• Independence of the most influential political media 6.75

• Independence of the Government and the Parliament from certain groups' special interests 6.42

• A general social climate where the general public intensively and continuously insists on the autonomy of actors in public life 6.27

• Independence of the state administration (civil service) from the ruling political party or coalitions 6.25

The items which are shown here are relevant to the autonomy criterion. They are very heterogeneous: on one hand they encompass the questions of division of power and mutual relationships between the three branches of Government, while on the other they have a bearing on the independence of the media and the state administration from partisan or

political influence.

Lastly, the criterion of professionalism and rationality was deemed considerably less important than the rest of the indicators of societal openness. For this reason only two top ranked items will be mentioned here. They describe political actors' general capacity for long-term planning and their ability to rise above partisan and ideological divisions.

- Readiness of the parliamentary majority, in specific situations, to take into consideration arguments made by the opposition 6.17
- A general social climate where the general public intensively and continuously demands that political life be conducted in a more rational manner 5.75

of affairs in Croatia mark.⁷

Tables 3-8 evaluate the six criteria of the attained degree of democracy and transparency of political processes. Apart from paying attention to the row containing each item's average mark, attention should also be paid to the rows which list the standard deviation from the arithmetic mean (SD) and the rows containing each item's minimal and maximum mark - from which it is apparent that expert assessments may vary a great deal. The final evaluation of this study should perhaps delve more deeply into this.

Research Results: State of Affairs in Croatia

By way of introduction, I should like to mention that I shall not, in presenting the assessment of various dimensions of the attained degree of democracy and transparency of political processes in Croatia, use the synthetic value of individual items, which is arrived at by multiplying the importance mark by the state

Table 3 - Evaluation of the most important items in the criterion of the degree of participation and vertical openness

	IMPORTANCE		REALITY			
	Mean I	SD	Mean E	SD	Min	Max
1) General readiness of key political institutions to act in a democratic fashion	6,58	,51	3,33	,98	2	5
2) Can citizens feasibly realise their interests by having recourse to local government institutions	6,50	,67	2,67	,89	1	4
3) Existence of institutional channels for efficient forwarding of citizens' suggestions	6,33	,89	3,50	1,62	2	6
4) The general social climate in support of the request of the general public that it be granted a right to participation in political processes	6,33	,65	3,42	1,24	2	6
5) Municipalities and cities have enough authority and can palpably influence/improve the quality of life of its citizens	6,25	,62	2,83	1,03	2	5
6) The state consults with the local and regional government while making decisions important for the functioning of the local government	6,25	,75	2,50	,67	2	4
7) The number and quality of public debates about new laws is of general or higher importance	6,25	,75	2,33	,65	1	3
8) Citizens' conviction that they can personally influence the course of political events	6,17	1,03	2,33	,65	2	4

Table 4 - Evaluation of the most important items in the criterion of the degree of control and legality

	IMPORTANCE		REALITY			
	Mean I	SD	Mean E	SD	Min	Max
1) A general social climate where the general public intensively and continuously insists on control over political processes	6,83	,39	3,42	1,08	2	6
2) Efficiency of mechanisms which control the work of the state administration	6,75	,45	2,33	,49	2	3
3) Quality control over the work of secret service agencies	6,67	,49	1,92	1,00	1	4
4) Efficient fight against corruption related to political function	6,67	,65	1,92	,67	1	3
5) There is no corruption in the civil service	6,67	,49	1,83	,83	1	3
6) There is no corruption in local government	6,67	,49	1,58	,67	1	3
7) Strict respect for division of power	6,50	,52	3,33	1,07	1	5
8) Efficiency of the legislative branch in overseeing and controlling the executive branch	6,50	1,00	2,33	,65	1	3
9) Efficiency of civilian control over the military	6,42	,51	2,83	1,27	1	6
10) Efficiency of civilian control over the police	6,42	,51	2,83	1,47	1	6
11) Quality control over the function of the public media	6,33	,65	3,58	1,31	2	6
12) Top ruling party officials and political parties have no informal immunity from legal persecution	6,33	,78	2,33	,78	1	4

Table 5 - Evaluation of the most important items in the criterion of transparency and access to information.

	IMPORTANCE		REALITY			
	Mean I	SD	Mean E	SD	Min	Max
1) The existence of the independent and well informed political public media	6,75	,45	3,75	1,48	1	6
2) A general social climate where the general public intensively and continuously insists on the transparency of the political decision-making process	6,58	,67	3,33	1,07	2	5
3) Important social and political decisions are not made behind closed doors, far from the public eye	6,50	,67	2,58	,90	1	4
4) Journalists experience no difficulty in obtaining information from relevant state bodies	6,50	,52	2,92	1,31	1	6
5) Citizens experience no difficulty in obtaining information from relevant state bodies	6,50	,67	1,92	,90	1	4
6) Journalists and citizens experience no difficulty in obtaining information from local government bodies	6,33	,49	2,58	1,00	1	4
7) Citizens may monitor the most crucial decision-making processes	6,33	,78	2,75	1,06	1	5
8) Transparency of the political decision-making process in the Parliament	6,25	,87	4,17	1,03	3	6
9) Simplicity, reliability and transparency of voting in the Parliament	6,25	,62	2,67	1,23	1	5
10) Public accessibility, accuracy and reliability of data related to financing of election campaigns	6,17	1,40	1,67	,65	1	3

Table 6 - Evaluation of the most important items in the criterion of the degree of responsibility

	IMPORTANCE		REALITY			
	Mean I	SD	Mean E	SD	Min	Max
1) A general social climate where the general public intensively and continuously demands that principal actors in public life act in a responsible manner	6,45	,69	3,45	1,04	2	5
2) State administration is efficient in providing services for its citizens	6,25	1,48	2,25	,75	1	3
3) Government is at the service of its citizens, and behaves accordingly	6,25	,75	2,75	1,22	1	4
4) Government officials and members of parliament are ready and willing to resign in the event of ethical transgression which is not subject to legal prosecution	6,17	,94	1,75	,75	1	3
5) Members of parliament conduct their work seriously and responsibly	6,17	,94	2,75	,87	1	4
6) Local government institutions and administration are efficient	6,00	1,41	2,58	,67	2	4
7) Political parties have a genuine interest in fulfilling pre-election promises given to voters	6,00	,74	2,17	,83	1	3
8) The Prime Minister is ready to take full responsibility for ethical and political transgressions of his cabinet ministers	6,00	,85	2,58	1,73	1	6

Table 7 - Evaluation of the most important items in the criterion of the degree of autonomy

	IMPORTANCE		REALITY			
	Arith. Mean	SD	Arith. Mean	SD	Min	Max
1) Independence of the judiciary from the Government	6,75	,45	3,50	1,78	2	6
2) Political independence of the Constitutional Court	6,75	,45	4,00	1,65	2	6
3) Independence of the most influential political media	6,75	,45	3,83	1,47	2	6
4) Independence of the Government and Parliament from certain groups' special interests	6,42	,79	2,67	1,15	1	5
5) A general social climate where the general public intensively and continuously insists on the autonomy of actors in public life	6,27	,79	3,08	1,00	2	5
6) Independence of state administration/civil service from the influence of the ruling political party or coalitions	6,27	,62	2,33	1,15	1	5

Table 8 - Evaluation of the most important items in the criterion of the degree of professionalism and rationality.

	IMPORTANCE		REALITY			
	Arith. Mean	SD	Arith. Mean	SD	Min	Max
1) Readiness of the parliamentary majority, in specific situations, to take into consideration arguments made by the opposition	6,17	,83	2,25	,87	1	4
2) General social climate where the general public intensively and continuously demands that the political life be made more rational	5,75	1,14	2,83	,72	2	4
3) Stability of the state administration	5,67	1,61	2,92	1,08	2	6
4) When making important political decisions, to what extent is the Government motivated by doing good in the long run and to which extent by the prospect of re-election?	5,67	1,44	3,08	1,08	1	5

Table 9 presents an overview of average marks of the six indicators of the attained degree of democracy and transparency of politics in Croatia. As seen, the highest mark has been given to the criterion of the degree of autonomy, for the most part thanks to relatively high average marks given to the independence of the judiciary, the Constitutional Court and the media. The degree of responsibility criterion received the lowest mark; the one given to the criterion of the degree of control and legality is not much higher. The final average mark given

to the political openness criterion - the six indicators being given equal treatment - stands at 2.71. The final average mark given to the political dimension, as based on all the used items, stands at 2.6 and must be considered as very low and unsatisfactory, for it is lower than the average mark given to any one of the other dimensions encompassed by the study. One may therefore claim that politics is the principal agent responsible for the lack of openness in Croatian society.

Table 9 - Average marks given to the six criteria of the attained degree of democracy and transparency of politics in Croatia

	Mean
1) Degree of autonomy	3,16
2) Transparency/Access to Information	2,84
3) Degree of Participation and Vertical Openness	2,82
4) Degree of Professionalism and Rationality	2,61
5) Degree of Control and Legality	2,46
6) Degree of Responsibility	2,35



Negative and positive examples from Croatian politics, and suggestions for improvement

Apart from marking the political dimension, the experts who were surveyed also listed some negative and some positive examples related to events in recent Croatian political history. Furthermore, they suggested some measures to increase the openness of Croatian society. There was a significant amount of dispersion over a gamut of examples and suggestions related to the three questions at hand. In the depiction of the answers, similar answers were grouped together so that the fact that there was a certain consonance of expert opinion - both in the choice of positive and negative examples and (to some extent) the suggestions for improvement - may come to the forefront.

The following examples were listed as the most negative and are based on events in the recent period that have diminished the degree of social openness in Croatian society.

1. Abuses of secret service agencies (mentioned 6 times).
2. Inadequate election legislation, which

includes the law on financing election campaigns, and insufficient supervision of the application of the said law; violation of the electoral procedure in the recent presidential election at some Diaspora polling stations in Bosnia-Herzegovina (mentioned six times).

3. Dubious decisions made in a non-transparent manner by leading government politicians (3 times).

4. The Parliament's inability to control in an effective way conflict of interest which some members of the political elite seem to be guilty of, and to enable investigative committees to function properly.

5. Meddling of the Catholic Church in the issues of upbringing and sexuality.

The first four examples are in tune with the previously shown marks which demonstrate that Croatian politics is falling into deficit: insufficient control mechanisms over activities of political institutions and political elites, bad laws or failure to apply laws. The fifth example is quite specific and clearly a result of a fear that this new commitment of the Catholic Church in the sphere of upbringing might endanger the thus achieved level of secularisation of state and society.

The following recent events were listed as being the most positive:

1. Positive changes in the media: in relation to political and social elites, the media have

assumed a more pronouncedly controlling role; higher competition in the media market (6 times).

2. Resignations of government officials, including Minister Žužul, as a result of public pressure and criticism. (6 times)

3. More frequent public criticism of the conflict of interest which some members of the political elite seem to be guilty of (twice).

4. The fact that the Družba Adria project and its negative ecological consequences, as a result of involvement of the media and civilian activism, has become a matter of public debate (twice).

All the positive examples mentioned above are instances of the successful controlling role played by the media and the public, which may lead to improvement at different levels.

The most important suggestions for urgent reforms and improvements listed by the experts who were surveyed contain the following recommendations:

1. Ensure a higher degree of openness of Parliament and Government, as well as other state organisations (the state administration, various state agencies), towards citizens (7 times).

2. Reform the election legislation and the law on financing election campaigns (6 times).

3. Improve the work of the media, ensure a higher degree of responsibility among editors and journalists, strengthen competition in the media market (5 times).

4. Ensure the application of the law on the right to access of information, increase the

availability of information related to all political processes and the work of state organs at all levels (4 times).

5. Adopt a new law on political parties; this should increase the attained degree of democracy and transparency of party activities (4 times).

6. Improve control over the work of state officials and politicians, especially in regard to issues related to conflict of interest and prevention of corruption (3 times).

7. Reform the public administration (3 times).

Conclusion

In conclusion, we may single out a few important points that characterise the findings of this pioneer research study in the field of societal openness in Croatian politics. First, one may say that the feebleness of Croatian institutions requires a prudent development of institutions - primarily in view of strengthening the rule of law. The most urgent steps need to be taken in the following spheres of political life: electoral legislation, the way in which parties are organised, financing election campaigns, and public administration.

Second, Croatian political institutions and political elites are insufficiently open to the public and seemingly incapable of responding to initiatives coming from civil society. It can also be said that Croatian political elites do

not have enough political responsibility, which is particularly visible in the issue of conflict of interest, as well as in their lack of readiness to act in tune with the principles of political responsibility. It is therefore imperative that an attempt is made to strengthen the system of checks and balances between the legislative and executive branches of the Government; the same is necessary in the case of institutions of independent civil control. Proper critically-oriented media involvement and the participation of citizens in controlling the work of political elites may be the answer.

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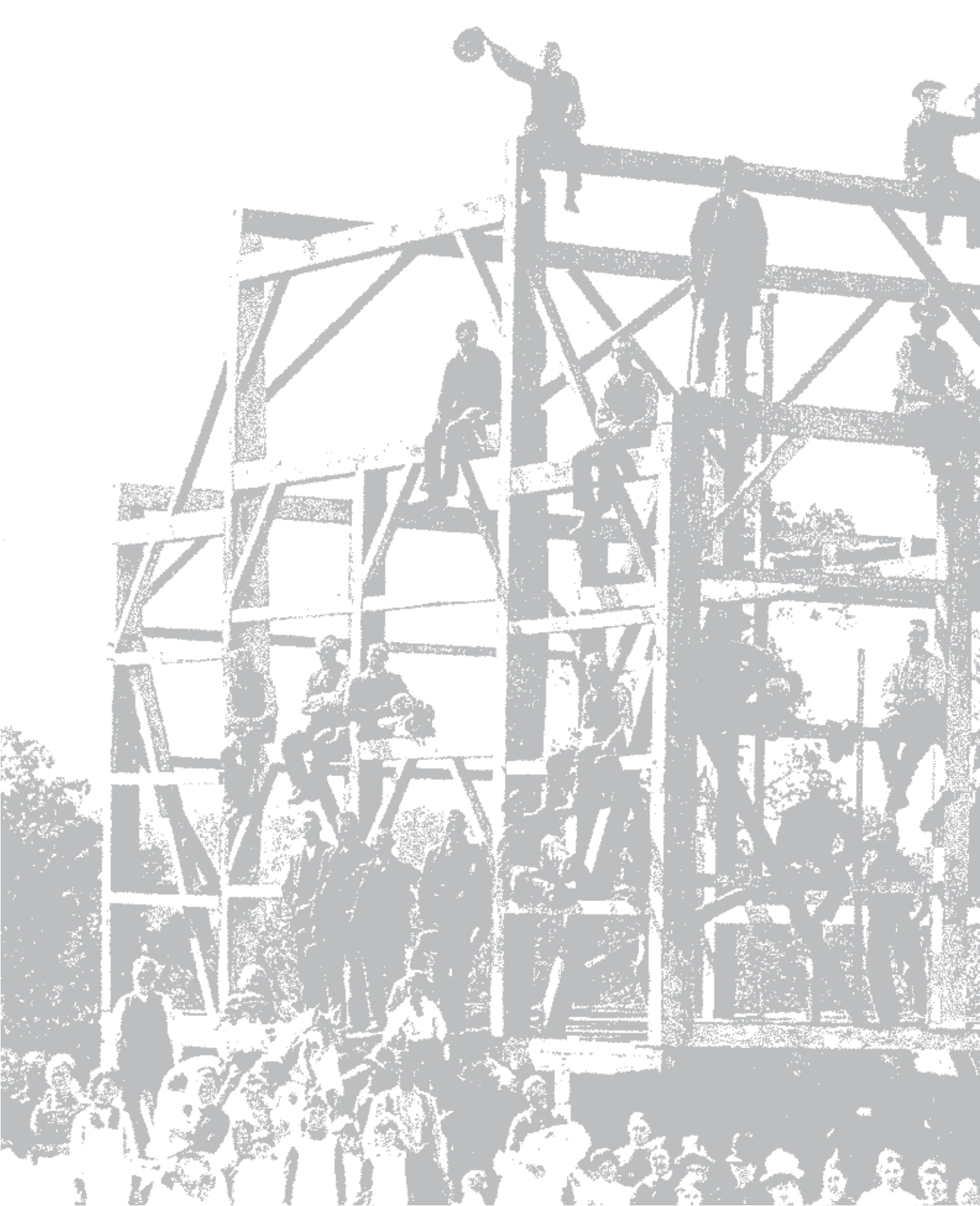
³ cf. <http://www.freedomhouse.org> and <http://www.bertelsmann-transformation-index.de>.

⁴ cf. Offe (1994)

⁵ See more in Zakošek (1997)

⁶ Compare Dahl (2000), pp. 41-49.

⁷ It seems to me that this measurement contains a methodological error which is especially apparent in cases of such items as have been deemed important but whose bearing on the state of affairs in Croatia is of no particular importance. In such cases the product of multiplication of two marks in fact conceals the alarming state of affairs which is to be found in Croatia: the importance mark increases the synthetic value instead of diminishing it. This is a problem with which we should certainly deal when evaluating the questionnaire and potentially when repeating the project in the years that follow. In my opinion, the assessment of the importance of individual elements should be completely omitted. Instead, the results of this study should be used so that the new questionnaire would include only those measuring instruments that proved to be sufficiently important.

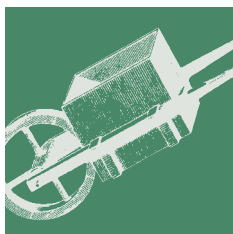




7

Case studies

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The influence of the Catholic Church on the policy of reproductive and sexual rights and health from the beginning of 2004 to March 2005

Marina Škrabalo and Hrvoje Jurić

Introduction: defining topic and aims

This study deals with the influence of the Catholic Church in Croatia on the formation and implementation of the policy of reproductive and sexual rights and health. It has been selected on the basis of the assessment of experts in defining the Open Society Index, since this issue is particularly illustrative in understanding the closing of society during 2004 and at the beginning of 2005. The influence of the Church is evaluated as a negative one in the questionnaire in terms of the perceived rigidity of attitudes of the Church towards human sexuality and reproduction, its excessive influence on state institutions, and its discriminatory effects on different social groups (single women, sexual minorities, and untraditional families).

It is not surprising that most of the experts' responses, regardless of their professional interests, referred to the attempts of the most powerful religious institution in Croatia to affect the societal and state regulation of sexuality. It should also be kept in mind that this is a particularly sensitive sphere where there is contact and tension between the

sacred and the profane, the private and the public, and pleasure and responsibility. Two universalistic paradigms meet in this context of time, society and location - sexual and reproductive rights on the one hand, and Catholic sexual morality on the other hand. The manner in which they are expressed, contrasted and transformed into formal and informal rules shows the complexity of the changes of Croatian society, and the contradictions and discomforts of its democratisation and modernisation.

The aim of this case study is to describe and identify the characteristics of the influence that the Catholic Church has had on state policy in relation to human sexuality and reproduction, especially relating to the topics which were in the focus of public discussion in 2004 and the first quarter of 2005 - the right to the voluntary interruption of pregnancy, the right to medically assisted fertilisation, the right to sexual education/information and training, and the equality of sexual minorities. In the opinion of the experts, this influence has been particularly significant for those events which are conducive to the closing of society. The conclusion also gives recommendations leading to an increase in societal openness in the context of shaping and implementing this policy by keeping in

mind the role of the Catholic Church. The study is based on a comparative analysis of official statements and documents of representatives of the Church, state institutions and other stakeholders in the public debate, on an analysis of media articles, as well as on additional semi-structured interviews and consultations with participants in the public debate.¹

In this study, the Catholic Church in Croatia is understood as an institution with a suitable structure and hierarchy, and not as a community of Catholic believers.² Those civil society organisations which rely on the public support of the Catholic Church in their public activity were also taken into account, in addition to official bodies, such as the Croatian Bishops' Conference (CBC), individual representatives of parishes and bishoprics, journals, and professional institutes.

Since the comprehensive understanding of policies relating to reproductive and sexual health and rights is not directly referred to in the domestic legislation which regulates, through a number of different laws and programmes, specific aspects of sexual and reproductive health and rights, this study is based on the definitions of these terms as referred to in the 2002 European Parliament

Resolution on Sexual and Reproductive Health and Rights,³ produced on the basis of the WHO and the Programme of Action of the 1994 International Conference on Population and Development (ICPD) in Cairo, and the Beijing Platform for Action of the 4th World Conference on Women of 1995, which the Republic of Croatia also undertook to enact and implement.

The Holy See also participated in the shaping of these international programmes and thus partially supported the Programme of Action of the ICPD and the Beijing Platform for Action, with some reservations in writing⁴ which relate to the right to abortion, the use of condoms as a means to prevent HIV/AIDS, the definition of an extramarital couple (heterosexual community) and the definition of gender outside the biological binarity of sexes. The Holy See has the status of observer at the UN, and has ratified the Convention on the Rights of the Child in 1990, and the Convention on the Elimination of all Forms of Racial Discrimination of 1969. It has a significant effect of advocacy in the UN, and some critics require that its position be made equal to the position of other religious communities, without the right to vote.⁵

Activities of the Catholic Church in Croatia are necessarily rooted in the universal dogma and largely in the Catholic Church's global policy, which is a natural result of the Church's hierarchical make-up.

The main features of the Catholic Church's activities in Croatia

Activities of the Catholic Church in Croatia are necessarily rooted in the universal dogma and largely in the Catholic Church's global policy, which is a natural result of the Church's hierarchical make-up. However, the distinctiveness of the situation in the Republic of Croatia lies in socio-political circumstances by means of which the Church has a more favourable position for spreading influence in the social sphere and for the shaping of public policies than it has in countries that are generally considered as examples of a highly developed democracy. Other relevant factors related to this are the statistical dominance of professed Catholics, who, according to the 2001 Census, make up 87% of the Croatian population; the level of development of democratic institutions, and the level of democracy present in the public dialogue and political processes. In this sense, the situation in Croatia can be compared to the situation found in countries such as Poland, Ireland, and (often overlooked) Italy. The main foothold for the Catholic Church's privileged status in Croatia (often evoked by

advocates of the legitimacy of the Church as a political actor) is in the statistical dominance of professed Catholics and the importance of the Catholic faith for the overall shaping of the Croatian cultural heritage, national identity and statehood. The Holy See's foreign policy clearly shows that it considers Croatia to be a friendly country, even an ally in the preservation of Europe's Catholic identity, particularly if we take into account the Pope's view that former Eastern European countries may in fact be the principal forces in the restoration of Christianity and Catholicism.⁶ This may be illustrated by strong political support the Church gave to Croatia during its struggle for independence in the break-up of former Yugoslavia, by the fact that the Vatican was one of the first states to formally recognise Croatia, and by the fact that the Pope visited Croatia 3 times during his pontificate (ranking Croatia in the top 17 out of 133 countries which the Pope visited). All this may shed light on the recent statement made by the apostolic nuncio Francisco Javier Lozano, (in June 2004 on Radio Vatican), that Croatia was the most Catholic country in Europe:


He stated that he “does not know any other country in which the public listens to the Church as much as it does in Croatia, even

The main foothold for the Catholic Church's privileged status in Croatia (often evoked by advocates of the legitimacy of the Church as a political actor) is in the statistical dominance of professed Catholics and the importance of the Catholic faith for the overall shaping of the Croatian cultural heritage, national identity and statehood.

in regard to social issues.” He took the discussion regarding the non-working Sunday as an example of “the Church defending workers' rights from unbridled interests of profit- seeking parties and consumerism”. According to Lozano, bishops and parish priests openly defend family rights and the institution of marriage. They raise awareness of “the demographic problems and the drastic decrease of the birth rate, as well as awareness that the population is fast becoming older and older”. These priests’ public appearances are aimed at “defending life and newborn children”. “People listen to the Church, which is reflected in the country's legal set-up. Politicians (even those who are in disagreement, but particularly those nostalgic about the former communist system), being aware that the Church is close to the people, both in the cities and rural areas, industry and agriculture, within the context of the family circle and in society in general, ought to have this in mind at the time of the elections. I believe I am not wrong when I say that Croatia is the most Catholic country in Europe today”, nuncio Lozano concluded.⁷

As far as the description of the Church's influence on Croatian society is concerned, the papal nuncio is right. Nowadays, the

Church is involved in a series of major public debates, ranging from the issues of increasing poverty and social injustice (the initiative on banning work on Sunday), environmental protection and sustainable development (opposition to Croatia's involvement in the Družba Adria project), to the questions related to human sexuality and reproduction, and occasionally even to corruption and injustice within governmental structures. In this sense, Cardinal Bozanić's 1997 Christmas epistle on the “sins of the structures” has acquired renowned status, as did the criticism levelled at the government in 1998 and 1999,⁸ which coincided with the period of the strengthening of opposition to Tuđman's regime. There is, in 2005, a resurgence of criticism of corruption. The Church has been, in this recent period, a fervent promoter of the pro-European orientation, which is in accordance with regional and global politics of the Vatican and the Pope himself. The reaction of the public to this is multiform, depending on the level of popularity of a particular topic and on the attitude the Church has adopted. The greatest ambivalence and departure from the Pope's teaching occurred in connection to the

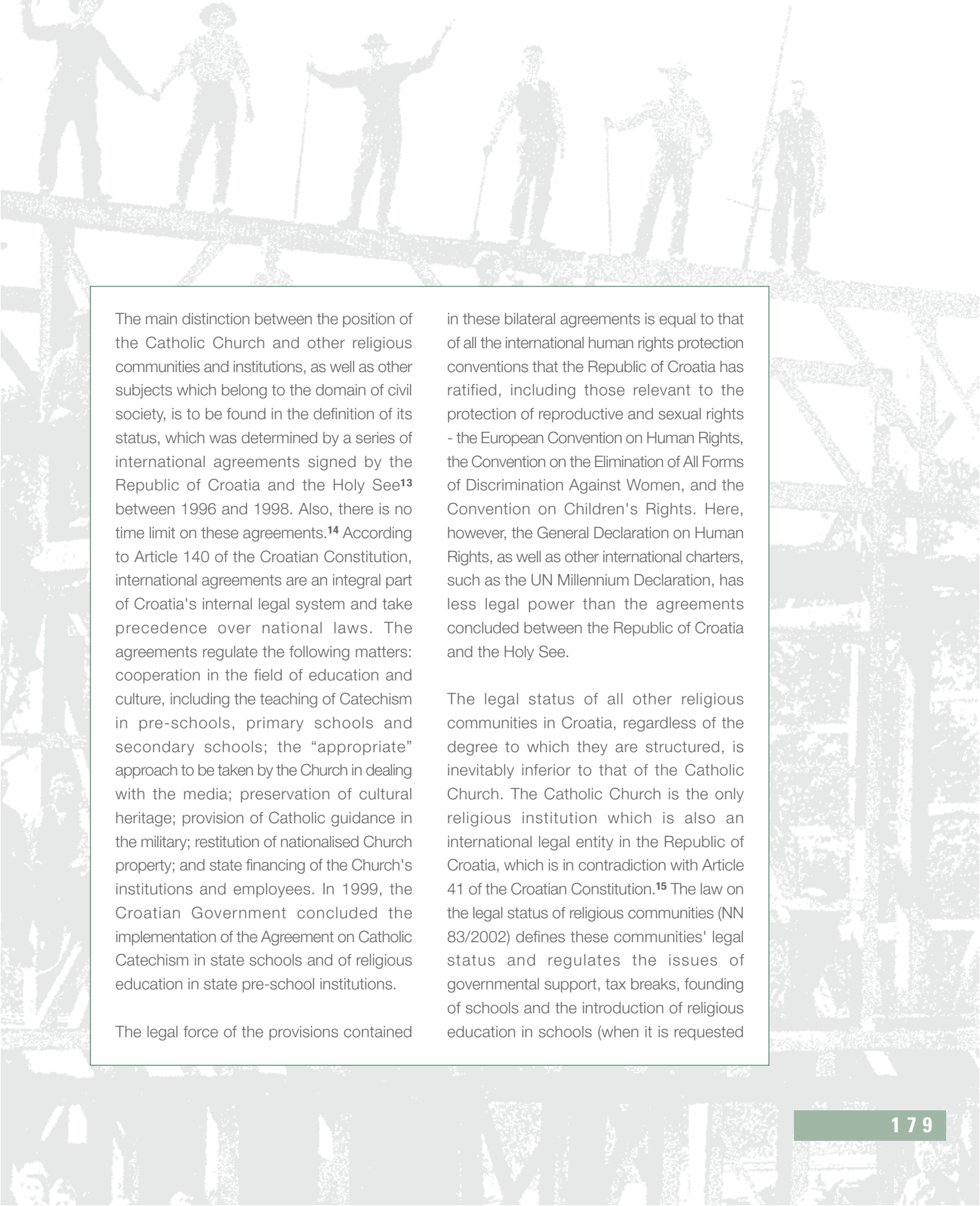


Nowadays, the Church is involved in a series of major public debates, ranging from the issues of increasing poverty and social injustice, environmental protection and sustainable development, to the questions related to human sexuality and reproduction, and occasionally even to corruption and injustice within governmental structures.

peacemaking process in post-war Croatia. CBC, and particularly Cardinal Bozanić, are active in promoting inter-religious dialogue, while the Church, at least up to the moment of Cardinal Bozanić's recent pro-European Easter Epistle, mainly kept quiet on the importance of processing war crimes committed by Croats.⁹ Some bishops and priests had also made rather right-wing statements. An exception to this was the Church's proactive attitude towards the preservation of a unified Bosnia and Herzegovina and its condemnation of the evictions that took place in the first half of the 1990s.¹⁰ Also, the Church has not shown any noticeable effort in systematically guiding local priests and laypersons in post-war areas towards peace-building within their parishes, and such exceptions as the Franciscan Institute for Peace or the autonomous Croatian Caritas cannot be taken as proof that the Catholic Church has any kind of peace-building policy in Croatia.

As sociologist Srđan Vrcan pointed out, Croatian society is significantly different from societies of many other, traditionally Catholic, European countries. In his view all these countries are displaying "a trend of individualisation, detraditionalisation and decollectivisation in the decision-making

process, as well as a trend of double religious pluralisation" - the "external" type, which refers to the increasing number of major religions present in European societies, and the "internal", which refers to individual strategies and approaches to religion. In Croatia, however, the process seems to have been reversed, which is visible in the increasing number of professed Catholics and "the renewed congregation of people in the Church's institutions, rather than elsewhere". The process continues to be followed by the "sacralisation of the national" and the "nationalisation of the sacred". Still, there is a noticeable gap in the number of declared and practising Catholics, and it is questionable to what degree the Pope's vision of Europe as "the civilisation of love and peace" can be put into action in Croatia.¹¹ The democratisation of Croatian society, which gained momentum and expression at the change of the Tudman regime in 2000, led to the articulation of interest positions which began to openly question the Catholic Church's attitudes and requirements, so that the Church, regardless of the statistical domination of Catholics and regardless of its power, has been facing the increasing challenge of providing a rationale for its demands.¹²



The main distinction between the position of the Catholic Church and other religious communities and institutions, as well as other subjects which belong to the domain of civil society, is to be found in the definition of its status, which was determined by a series of international agreements signed by the Republic of Croatia and the Holy See¹³ between 1996 and 1998. Also, there is no time limit on these agreements.¹⁴ According to Article 140 of the Croatian Constitution, international agreements are an integral part of Croatia's internal legal system and take precedence over national laws. The agreements regulate the following matters: cooperation in the field of education and culture, including the teaching of Catechism in pre-schools, primary schools and secondary schools; the "appropriate" approach to be taken by the Church in dealing with the media; preservation of cultural heritage; provision of Catholic guidance in the military; restitution of nationalised Church property; and state financing of the Church's institutions and employees. In 1999, the Croatian Government concluded the implementation of the Agreement on Catholic Catechism in state schools and of religious education in state pre-school institutions.

The legal force of the provisions contained

in these bilateral agreements is equal to that of all the international human rights protection conventions that the Republic of Croatia has ratified, including those relevant to the protection of reproductive and sexual rights - the European Convention on Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on Children's Rights. Here, however, the General Declaration on Human Rights, as well as other international charters, such as the UN Millennium Declaration, has less legal power than the agreements concluded between the Republic of Croatia and the Holy See.

The legal status of all other religious communities in Croatia, regardless of the degree to which they are structured, is inevitably inferior to that of the Catholic Church. The Catholic Church is the only religious institution which is also an international legal entity in the Republic of Croatia, which is in contradiction with Article 41 of the Croatian Constitution.¹⁵ The law on the legal status of religious communities (NN 83/2002) defines these communities' legal status and regulates the issues of governmental support, tax breaks, founding of schools and the introduction of religious education in schools (when it is requested

The Catholic Church is the only religious institution which has founded its own private media sector - Croatian Catholic Radio, the Catholic Information Agency (IKA), and over 30 Internet websites.

by parents), for all those communities which have signed an agreement with the Government.¹⁶ In 2002, the Government entered into special agreements with 10 other religious communities, including the

Serbian Orthodox Church and the Islamic community, and enabled them to have their own religious education in state schools, direct recognition of church marriages, state financing of salaries and pensions for priests and monks, and religious guidance in the military. Therefore, the position of 39 religious communities in Croatia is markedly different depending on whether or not the Government has offered them the aforementioned agreement, whereby the smaller religious communities have been put in a less favourable position.¹⁷

Article 3 of the Act on the Legal Status of Religious Communities also contains provisions which define the impermissible forms of religious communities' activities, such as the spreading of "intolerance and prejudice towards other religious communities, their members or other citizens", as well as any activity which defies "the legal make-up and public morals", or is

"harmful to either life and health or other rights and freedoms of its members and other citizens". So far, these provisions have not been touched upon in the discussion of religious communities' public activities, but it was important to note that the given law contained the said legal safety mechanism.

In 2000, the Catholic Church, in accordance with the provisions of the international agreement between Croatia and the Holy See, also signed an agreement with Croatian Radio Television (HRT), whereby it gained 10 hours of regular television coverage each month. This means that events organised by Catholic Church receive roughly 60 times greater overall media coverage than those of any other religious community.¹⁸ In addition, the Catholic Church is the only religious institution which has founded its own private media sector - Croatian Catholic Radio, the Catholic Information Agency (IKA), and over 30 Internet websites.

Although varying levels and varying intensity of (government) regulations in its dealings with different religious communities show that religious communities in Croatia are not given equal treatment (as guaranteed by Article 41 of the Croatian Constitution), the behaviour of the Constitutional Court is

State institutions, as well as individuals within these institutions, are to a certain and limited extent obliged to adhere to the requirements of the agreements concluded by the Republic of Croatia and the Vatican, but it has been shown that their special regard for the Church in fact exceeds their contractual obligations.


indicative of the silent acceptance of this inequality. On the only occasion this matter was ever looked into, the Constitutional Court declared its own lack of authority on the matter, referring to Article 128 of the Constitution and the fact that the Constitution does not explicitly state that the Court is authorised to assess the congruence between international agreements and the Constitution.¹⁹ The failure to question a situation where one institution or interest group has a protected social position or where one religious community is privileged in comparison to others is of great significance for the understanding of the Church's role in the discussion of reproductive and sexual rights in the context²⁰ of Croatian society.

State institutions, as well as individuals within these institutions, are to a certain and limited extent obliged to adhere to the requirements of the agreements concluded by the Republic of Croatia and the Vatican, but it has been shown that their special regard for the Church in fact exceeds their contractual obligations. The following conclusion can be reached here - the weaker the mechanisms of democracy and institutions of democratic power are, the stronger the 'invisible' influence is - whereby the system itself becomes more porous and vulnerable to this kind of influence.

Although such influence cannot be documented (except indirectly), its existence cannot be denied either.

The situation described above is true not only of state institutions, but also of those institutions that shape the public opinion - the media. The Catholic Church's direct influence is primarily present in the media which declares itself Catholic, but it is also present in the media whose editorial policy (usually defined as "pro-Croatian" or "nation-building", such as *Hrvatsko slovo*) is of a definably Catholic orientation. The examples of the media consistently questioning the role of the Church in society are very rare (one such example is the weekly *Feral Tribune*), and, more importantly, which is most apparent in the Catholic media space - the critical Catholic magazine *Puls* ceased to exist after its publisher, *Glas Koncila*, withdrew its support - after the publication of the said magazine's third issue - at the beginning of 2004. It should be pointed out that a superficial analysis of the media coverage of the public debate on

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reproductive and sexual rights in the course of 2004 and 2005 suggests that major national daily and weekly newspapers - Jutarnji list, Vjesnik, Novi List, Slobodna Dalmacija, Večernji list, Globus and Nacional - gave quite a bit of media space both to Church representatives and opponents of the Church's views on these matters, but that the Church then increasingly started describing its treatment by the secular media as prejudiced and negative.²¹

Finally, the Catholic Church's 'visible' and 'invisible' influence can be detected at other, 'lower' levels of social life - in civil organisations, local communities and among individuals, such as parishes, professional Catholic associations of doctors, journalists and teachers, Catholic family centres and initiatives for the increase in the birth-rate, the Organisation for Holistic Sex Education - Teen STAR, or the neo-Catechumenic movement. Independent civil initiatives based on Catholic and Christian values do not receive much media attention and mainly deal with inter-religious dialogue and the promotion of peace. Unfortunately, this study will not focus on the influence of the Church on initiatives for social organisation undertaken by Catholic citizens, but only on the activities of those organisations which were directly

involved in the public debate on reproductive and sexual rights and health in 2004.

The Catholic Church and the policy of reproductive and sexual rights and health in Croatia

Such initiatives and activities of the Catholic Church in Croatia concerning the said topics should be seen in the light of the Vatican's global policy on ethical and legal regulation of human sexuality and reproduction, which is unambiguous, consistent and transparent. The Church advocates the protection of human life from the moment of conception and thereby promotes the banning of abortion, which is considered to be a form of murder punishable by excommunication. The Church approves sexual activity only within the context of a heterosexual marriage based on mutual understanding, love and the desire to have children. The Church considers mechanical and chemical contraceptives as obstructions of the natural process of potential conception, which makes the withdrawal method the only one which the Church sees as ethically justified for family planning and the prevention of sexually

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transmitted diseases, including HIV/AIDS. Its view on homosexuality is that homosexuality is an incomplete and not fully mature sexual orientation - although which, all flaws aside, does not mean that homosexuals should be discriminated against.²² The sin of homosexuality is the practice of homosexuality, so homosexuals who are Catholic are told to practise sexual abstinence. There are Catholic retreats for homosexual members of the Catholic Church everywhere in the world.²³

In the last 15 years, the Church has been consistent in this field of activity in Croatia as well - in terms of the attitudes and requirements which it has promoted - but the intensity of these attitudes and requirements seems to have grown in the last couple of years, even in comparison with the period between 1992 and 1998, when Church influence on the government was the strongest. It may be assumed that the key difference between the current activities of the Catholic Church and its activities during the 1990s lies in the manner in which the Church understands and perceives its relationship with political power centres - whereas from the beginning of the 1990s up until the end of Tudman's regime the Catholic Church was one of the main creators of

national politics, relying on nationalism as well as on Croatian Catholic traditionalism,²⁴ the Church now sees itself in opposition, or as a factor in that aspect of the opposition whose task it is to prevent political and ethical pluralism and liberalism from gradually assuming control.

In the light of this assumption it is not surprising that during the 1990s the Catholic Church made only one strong appeal - Cardinal Kuharić's letter to the Croatian National Parliament in May 1992, in which he urged for a ban on abortion, restrictions on contraceptives and the introduction of religion-based sexual education in schools.²⁵ Due to a negative public response, Cardinal Kuharić's initiative did not result in the changing of the law. Such an outcome was influenced by yet another factor - a total failure of a joint international and national effort in the implementation of the first national programme for demographic restoration, championed by don Ante Baković, a radical proponent of an equally radical national policy for an increase in the birth rate. The National Programme for Demographic Restoration, which was in effect from 1996 to 2000, was Croatia's only official document ever to define life as starting at the moment of conception, but its measures for an increase in the birth

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rate were never implemented due to a shortage of funds. Still, the measure did affect public opinion: it promoted the traditional role of the woman as housewife, traditional family values, and a systematic resettlement of ethnic Croats to those areas in Croatia which were affected by the war.²⁶

The most important, and often the least noticeable negative consequence on reproductive rights that has come out of the “partnership” between the Church and Croatian Democratic Union’s (HDZ) regime

in the 1990s has been the disappearance of the Constitutional provision of 1974 on a person’s right “to free choice in having children, which can only be limited in order to protect his/her health”, and the passing of a very general provision which stated that “every human being has the right to life”.²⁷ In the long run, the second provision made room for

the legal redefining of when and where human life begins, mostly through public debates and arbitrary interpretations, as was the case

in 1996 when the organisations for the increase in the birth rate sought the abolition of the law on abortion on the grounds that it was unconstitutional and out of tune with the National Programme for Demographic Restoration.

Until now the Church has never directly questioned the constitutionality of abortion, mainly because it has been shown that the population, despite the influence of the former regime and the Church, resists the retraditionalisation of family life and reproductive rights. According to the latest research, from March 2004, 65% of the population, regardless of gender, support women's right to abortion, 73% support women's right to birth control, and almost 93% think sex education should be taught in schools even if it includes information about the condom as a means of protection against HIV and other sexually transmitted diseases.²⁸

The new momentum the Church has gained in the promotion of its concept of reproductive policy is surely a result of and a response to a noticeable change of policy in regard to sexual minorities and the establishment of efficient institutional mechanisms for the protection of gender equality. Croatia's attempts to join the EU have directly affected the process, as have the activities of feminist groups and a more efficient proliferation of

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sexual minorities, which since entering the public domain 2 years ago have succeeded in changing over 10 laws, including the introduction of the institution of same-sex union into the Family Act, in 2003. It is therefore hardly surprising that in 2002 the Croatian Bishops' Conference (CBC) came out with new guidelines for pastoral care for marriage and family,²⁹ and that, during the Pope's third visit to Croatia, in June 2003, it also published a pastoral epistle entitled "Family - the path of the Church and the People":

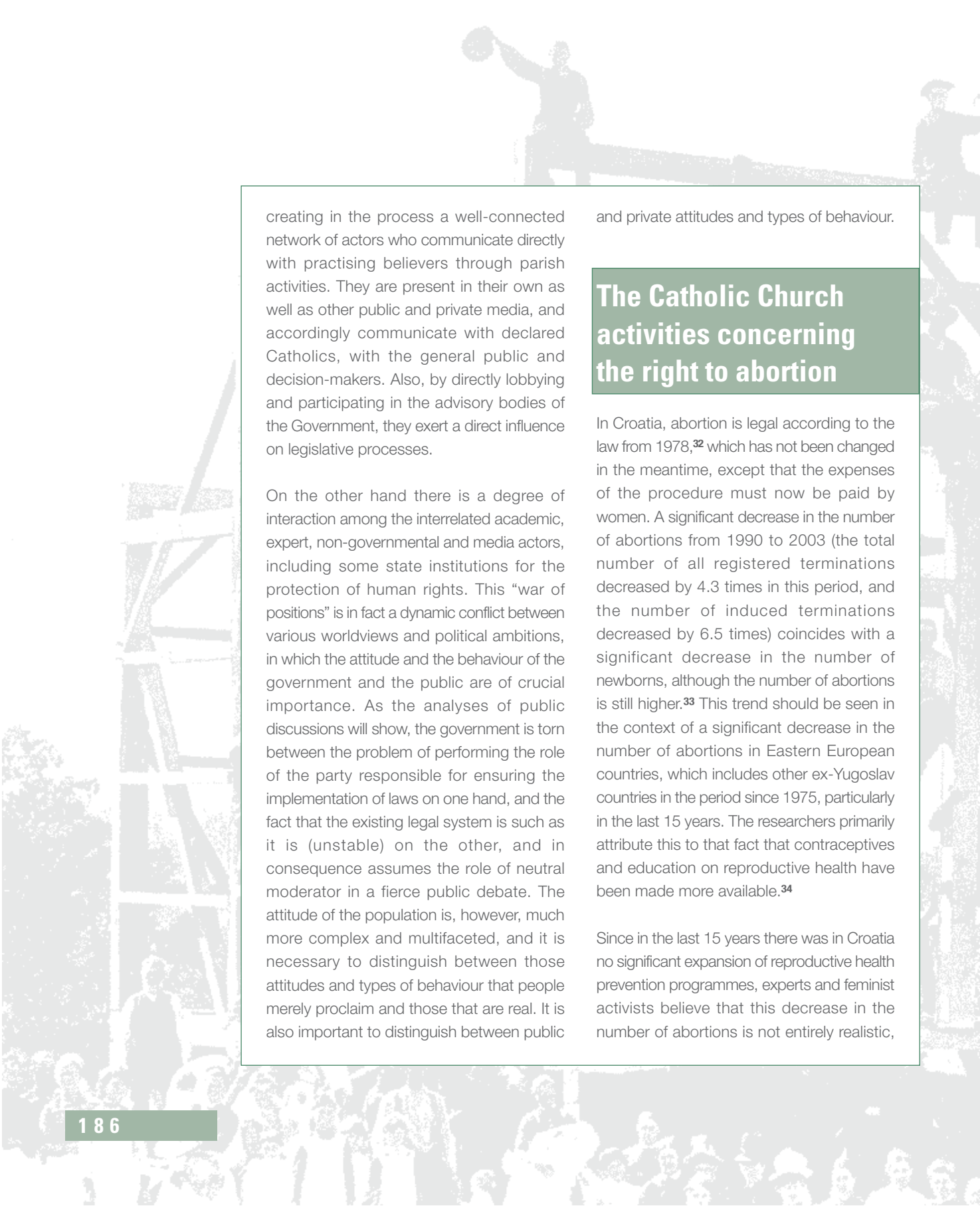
"The consumer mentality and the all-pervasive individualism distort the idea of the human being and neglect man as a social being. This has influenced the general understanding of marriage and family, marital and sexual morals, and the legislation concerning marriage and family. This endangers not only the stability of marriage and family, but also the nation's social and economic existence. Therefore it is obvious that the family needs help from all sides. Strengthening the family is the only way to recover the threatened aspects of social and church life, and this is exactly what the Holy Father points out to in a number of documents".³⁰

In July 2004, Croatia was visited by the President of the Papal Council for Family,

Cardinal Alfonso Lopez Tujillo, who, as was reported by IKA, focused on the importance of social and political involvement of Catholic families in response to the increasing relativisation of the notion of traditional family that is taking place across Europe:

"Laws are imperfect, bad, sometimes they even factually deny the existence of family, as is the case with the sad fact of recognising the so-called 'factual' unmarried or homosexual couples. This is in fact a destruction of the family as well as an attempt to replace it with an alternative'. The Cardinal invited families to organise themselves better within different movements and organisations, which is one of the main strategies of the Church as put forth in the Family Rights Charter, which could help the Church acquire a certain political status in the positive sense of the word. This way it can help the society, enter into dialogue with politicians and legislators, and inspire and empower others".³¹

The intensity of Church initiatives in the sphere of reproductive and sexual rights in the course of 2004 and 2005 shows that the implementation of the Catholic Church family policy is in full swing, and CBC has managed to mobilise its own institutions, the academic community, professional Catholic associations, the media and civil society organisations,



creating in the process a well-connected network of actors who communicate directly with practising believers through parish activities. They are present in their own as well as other public and private media, and accordingly communicate with declared Catholics, with the general public and decision-makers. Also, by directly lobbying and participating in the advisory bodies of the Government, they exert a direct influence on legislative processes.


On the other hand there is a degree of interaction among the interrelated academic, expert, non-governmental and media actors, including some state institutions for the protection of human rights. This “war of positions” is in fact a dynamic conflict between various worldviews and political ambitions, in which the attitude and the behaviour of the government and the public are of crucial importance. As the analyses of public discussions will show, the government is torn between the problem of performing the role of the party responsible for ensuring the implementation of laws on one hand, and the fact that the existing legal system is such as it is (unstable) on the other, and in consequence assumes the role of neutral moderator in a fierce public debate. The attitude of the population is, however, much more complex and multifaceted, and it is necessary to distinguish between those attitudes and types of behaviour that people merely proclaim and those that are real. It is also important to distinguish between public

and private attitudes and types of behaviour.

The Catholic Church activities concerning the right to abortion

In Croatia, abortion is legal according to the law from 1978,³² which has not been changed in the meantime, except that the expenses of the procedure must now be paid by women. A significant decrease in the number of abortions from 1990 to 2003 (the total number of all registered terminations decreased by 4.3 times in this period, and the number of induced terminations decreased by 6.5 times) coincides with a significant decrease in the number of newborns, although the number of abortions is still higher.³³ This trend should be seen in the context of a significant decrease in the number of abortions in Eastern European countries, which includes other ex-Yugoslav countries in the period since 1975, particularly in the last 15 years. The researchers primarily attribute this to that fact that contraceptives and education on reproductive health have been made more available.³⁴

Since in the last 15 years there was in Croatia no significant expansion of reproductive health prevention programmes, experts and feminist activists believe that this decrease in the number of abortions is not entirely realistic,



but that it reflects the increasing auto-censorship of health institutions, which fail to report performed abortions in accordance with the regulations of the Croatian Institute for Public Health, tolerate individual doctors' refusals to perform abortions and even silently boycott the performing of abortions, while the market for illegal abortions keeps growing.³⁵ In addition, the quadruple increase in the share of "other abortions" from 8.6% in 1990 to 28.2% in 2003 is very indicative. The danger that official data on abortion might be incorrect and unrealistic was pointed out at the end of 2003 by Dr Darko Milinović, a member of HDZ and one of the potential candidates for the position of Health Minister at the time.

Although without proof, it is beyond doubt that Catholic and pro-life activists' efforts have greatly influenced the change in the social climate. Hospitals and doctors have become more hesitant about performing and documenting induced abortions, and pro-life pamphlets are available in surgery waiting rooms. Still, the change of public attitudes has not been so drastic as to bring the relevance of and respect for the existing legislation into question.


By regularly condemning abortion in sermons, particularly on the Feast of the Assumption in 2004 and the Day for Life on 6 February, 2005, the Church came into the focus of public attention twice - only in 2004. At the beginning of the year, a public scandal

emerged over a parent's complaint that the American documentary *Silent Scream* (1983) had been shown during a Catechism lesson in the 6th General-programme secondary school in Zagreb. The documentary contained scenes of foetus curettage at a later stage of pregnancy, and it also became known that the film had for decades

(in socialism as well) been sporadically screened in educational institutions, without being a part of the curriculum. In response to a widespread protest in the media, the Minister of Science, Education and Sports, Dragan Primorac urgently summoned the

Assessment Board which concluded that the film was unsuitable as educational material. Before the Board even made its final decision, the Minister informed Cardinal Bozanic by phone that the film was unsuitable, with which the Cardinal concurred. The Board's conclusions were presented to the Government, and a memorandum was sent out to the schools on March 2, 2004. This concluded the case, but the media reaction stimulated a discussion of State influence on Catechism in schools and of the responsibility that the Church should have towards students.


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The person who was especially prominent in the media at the time was don Anton Šuljić, the head of IKA and secretary of the CBC Press Office. In the interview he gave to Vjesnik on 5 March, he stated his belief that religious fanaticism should be prevented from exerting any kind of influence on the teaching of Catechism. He also expressed concern, however, that the screening of the film and consequent commentary might have been used by the Social Democratic Party (SDP) for political propaganda purposes. He also commended the Minister for nurturing dialogue, and added rhetorically: "Ultimately, it could, of course, always be argued that no one has the right to meddle with the contents of Catechism, even the Catechism taught in schools, apart from the Church itself". Don Šuljić, as well as one of the Glas Koncila columnists,³⁶ criticised the media for being prejudiced in their reporting, which had been aimed at condemning Catechism and the Church, as well as for not including teachers of Catechism in the discussion. The authenticity of a survey conducted by Jutarnji List, according to which 70% of the students saw the film, was also challenged. Furthermore, Glas Koncila criticised the Minister for humouring the media and for founding the Board, which prevented the National Catechesis Office from becoming involved in finding a solution to the problem.

Although the *Silent Scream* scandal did not contribute anything to the general understanding of the position of the Church and its authority on abortion, the whole affair was quite indicative of Minister Primorac's style of governing - and later the Government's as well - the Minister acted as an arbiter and left the decision as to the film's suitability to a "group of experts", meanwhile checking it with a high-ranking Church official if the decision was acceptable. The Minister's approach to this case produced a positive response from the for the most part secular public, which welcomed the film's withdrawal from schools, but this also pleased Church officials who were happy that the Minister did not himself directly decide on the film's unsuitability. It is not surprising that the Minister did something similar in the recent heated public discussion on sex education in schools.

While in the *Silent Scream* scandal the Church found itself criticized by the public, and indirectly by the Ministry of Education, at the end of the year it organised an event which received a lot of media attention. After the making of announcements in the middle of November, on 16 December representatives of six religious communities - Catholic, Orthodox, Islamic, Evangelical, Baptist - made their first joint statement. Their statement,



entitled “Human life is a gift from God”, contained their shared attitudes on the issues of conception, transfer and preservation of human life - “from conception to natural death”, and focused on questions related to abortion, and medically assisted fertilisation and biogenetics. The statement was aimed at “improving the understanding of particular issues and better legal regulation of the same”. Nowhere in the text is it specifically requested that abortion be banned, but the entire society, particularly the media and educators are called on to get involved in the shaping of public opinion in accordance with a recognisably religious worldview:

“Our joint statement to the public is made in good faith, in the hope it will be met with understanding, acceptance and support. In Croatia most people declare themselves as religious and say that they belong to a religious community, so the communities themselves rightfully expect those who are responsible in our society to keep in mind that Christianity, Judaism and Islam all rest on the belief that God gave life to man and that He is the only one who has to right to take it away. In a time when the 'civilisation of death' phenomenon is being discussed more frequently in our country as well, we invite everyone, particularly representatives of the

*media and educators, but also any members of the Croatian society who can influence the public opinion in any way to assist in the creation (individually and jointly) of a general climate which will be friendly and positively inclined toward having children and towards human life in general”.*³⁷

A lot of media attention was given to an almost imperceptible unification of religious communities, but, as Professor Puhovski observed, this happened over an unsuitable aim - to influence the legislation on the issues of health and human rights. In different national media the statement was interpreted as a call for a ban on abortion, and this view was shared by the women's organisation B.a.b.e., which called for the creation of a “citizens' alliance” to oppose the “ecumenical” one. Feminist theologian Grünfelder pointed out the lack of involvement of religious communities in the creation of good and efficient prevention strategies. The detrimental effect that a ban on abortion would have on women's health was also pointed out. SDP parliamentary representative Antičević stressed that the state must not yield to the requests of religious communities, as that would go against the principle of separation of church and state. The Jewish community denied having participated in the preparation

Although Hebrang's statement does not reflect HDZ's official attitude, it indicates that the balance in the HDZ's leadership has swung towards acknowledging the majority public opinion. The attitude shared by most parliamentary parties ... is reflected in the prevalent European practice of abortion regulation - at the expense of the institutionalisation of Christian Democrats' views that life begins at the moment of conception. HDZ's party manifesto professes the same attitude.

of the statement and said that the statement opposed a legal ban on physiologically and psychologically justified abortion.

The importance of this statement is that, unlike Cardinal Kuharić's 1992 letter to the Parliament,³⁸ it shows that religious communities are aware of the spreading of democracy in Croatia and that even churches have to take public opinion into consideration if they wish to influence the legislation. In addition, the statement was written in an affirmative tone and avoids confrontation with dissenting opinions, while the pre-Christmas and pre-election timing of the joint appearance of the six religious communities suggests that the public reaction to the statement had been taken into serious consideration.

Although it is difficult to assess the influence this initiative might have exerted on the presidential candidates' public attitudes on abortion, it was obvious in the presidential debates that HDZ's candidate and Deputy Prime Minister had a hard time expressing a clear opinion on abortion, and instead of offering her personal views she quoted HDZ's opinion on the protection of life from the moment of conception and stated that she would organise a referendum on the issue if she ever became president. Ironically, Bishop

Škvorčević criticised this very idea, saying that "a commandment of God cannot be put to a referendum". Only the current President and the HSLs candidate clearly stated their agreement with the existing legislation.

Jadranka Kosor's pre-election hesitation does not seem to indicate HDZ's willingness to change the legislation, which is obvious from the statement made by the former Health Minister, Hebrang, who is one of HDZ's most influential members. His statement is consistent with the crucial, but little known role he played in the prevention of a revision of the law on abortion in 1995:³⁹

"The right to abortion must remain legal. This is a sad provision, but the experiences of others point that it is less harmful than criminalised abortion".⁴⁰

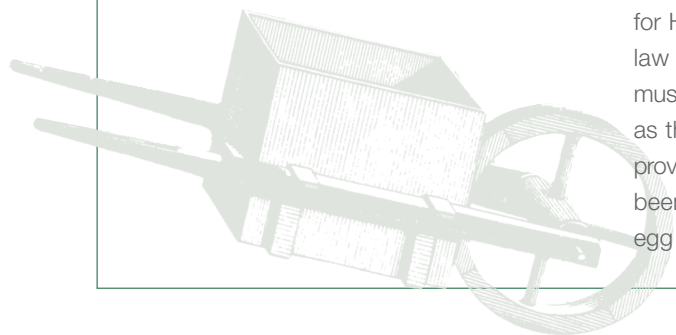
Although Hebrang's statement does not reflect HDZ's official attitude, it indicates that the balance in the HDZ's leadership has swung towards acknowledging the majority public opinion. The attitude shared by most parliamentary parties (apart from the Croatian Party of Rights and some factions in the Croatian Peasant Party HSS) is reflected in the prevalent European practice of abortion regulation - at the expense of the institutionalisation of Christian Democrats'

views that life begins at the moment of conception. HDZ's party manifesto professes the same attitude.

At the same time, the feminist movement stepped up in defence of the right to abortion, as was the case on several different occasions in the 1990s when there were signs that the right to abortion could be limited as a result of the pressure exerted by proponents of pro-life attitudes.⁴¹ Both of these initiatives - the one defending the right to abortion and the other defending the right to life according to a Catholic understanding of it - primarily address the public in the sense of promoting their respective views, while women's organisations speak more directly to the Government and the Parliament, reminding them of their responsibilities in implementing the existing laws. There is no direct communication between these parties, apart from one-way items served in their own respective or national media.

The Catholic Church's activity as concerns the right to medically assisted fertilisation

It was in 2004 that the Church in Croatia first came out with its views regarding medically assisted fertilisation. With its own top-quality experts and, on average, over 15,000 newborns on an annual basis, Croatia had been one of the leading countries in this field for 20 years. The reaction of the Church was prompted by a Government bill that had been brought before Parliament on October 1, 2004. The bill, which was not affected by successive changes in the Government structure, was prepared by the Ministry of Health's working group headed by Dubravka Šimonović, an expert in the legal aspects of medically assisted fertilisation (MAF) and the head of the Ministry of Foreign Affairs' Board for Human Rights. The passing of the new law on MAF is a requirement that Croatia must fulfil if it wants to join the EU, especially as the old law from 1978 does not include provisions for medical procedures which have been developed in the meantime, such as egg cell donation. An additional reason for

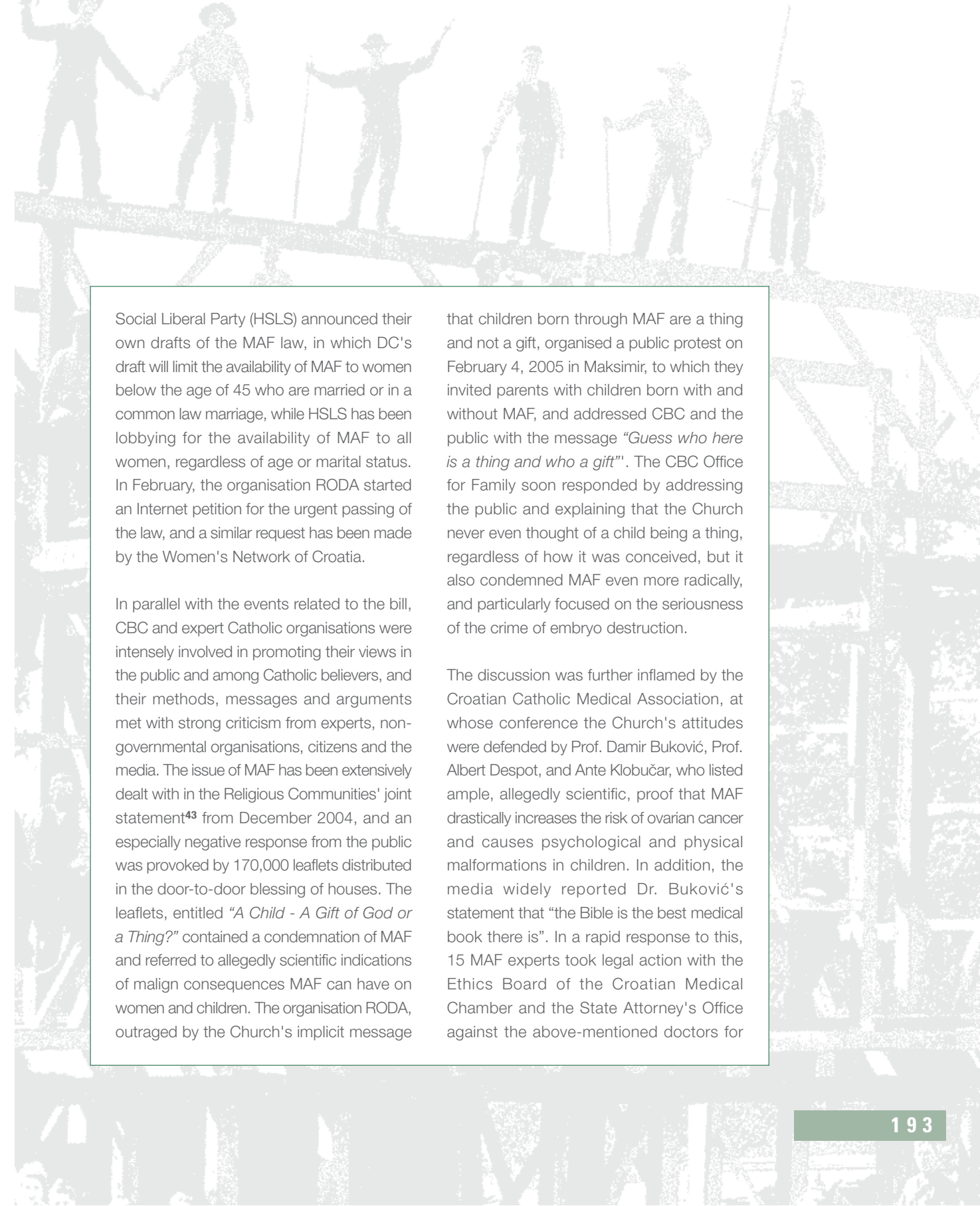


The main objections of the Church in regard to this bill refer to the availability of MAF to unmarried women, the donation and use of sperm and egg cells of third persons, and particularly the selection of embryos during embryo-transfer and the freezing of a number of embryos for future procedures.

the speedy passing of the law was a scandal involving the illegal use and sale of egg cells, which had previously resulted in a far-reaching investigation carried out by the Ministry of Health in 2003. While it seemed that this bill presented a rare case of consensus between the experts and politicians, the Government, the opposition and non-governmental organisations, CBC's statement of October 2, 2004 resulted in the Government's failure to implement the decision already made to bring its own bill before Parliament. This caused a heated public discussion that has been going on for four months ago.

The main objections of the Church in regard to this bill refer to the availability of MAF to unmarried women, the donation and use of sperm and egg cells of third persons, and particularly the selection of embryos during embryo-transfer and the freezing of a number of embryos for future procedures. In a clarification issued at the beginning of 2005, CBC representatives condemned "the destruction of embryos" as a serious crime against the sanctity of human life, which, they believe, begins at the moment of conception, and supported their claim by giving an estimate that, in the last 20 years, 285,000 embryos have been destroyed for the sake of bringing no more than 15,000 children into this world.

Immediately after CBC's statement was issued the bill disappeared from the legislative procedure, and the working group which wrote it never had a chance to make final modifications. Even after several attempts had been made by RODA, a reproductive rights NGO, the media and MP Antičević to find the reasons for the withdrawal of the bill, but the Government provided no clear answer and offered vague replies, involving, for instance, the need to be harmonised with EU regulations,⁴² the need for the bill "to be adjusted to our people", and Minister Ljubičić's most recent explanation that the only thing that remained to be done was the modification of the provisions on cloning. The already confusing process in the passing of this law was further complicated by a statement made by the National Bioethical Board on Medical Issues (Government's advisory body), which announced that their working group would soon propose rather fundamental amendments to the bill, amendments which would be consistent with CBC's objections. Even though Minister Ljubičić, and even deputy Prime Minister Kosor, disassociated themselves from the prospect of this advisory body being in charge of drafting the new bill, it still remains unclear as to what kind of Government bill on MAF will be brought before Parliament. Meanwhile, the Democratic Centre (DC) and the Croatian



Social Liberal Party (HSL) announced their own drafts of the MAF law, in which DC's draft will limit the availability of MAF to women below the age of 45 who are married or in a common law marriage, while HSL has been lobbying for the availability of MAF to all women, regardless of age or marital status. In February, the organisation RODA started an Internet petition for the urgent passing of the law, and a similar request has been made by the Women's Network of Croatia.

In parallel with the events related to the bill, CBC and expert Catholic organisations were intensely involved in promoting their views in the public and among Catholic believers, and their methods, messages and arguments met with strong criticism from experts, non-governmental organisations, citizens and the media. The issue of MAF has been extensively dealt with in the Religious Communities' joint statement⁴³ from December 2004, and an especially negative response from the public was provoked by 170,000 leaflets distributed in the door-to-door blessing of houses. The leaflets, entitled *"A Child - A Gift of God or a Thing?"* contained a condemnation of MAF and referred to allegedly scientific indications of malign consequences MAF can have on women and children. The organisation RODA, outraged by the Church's implicit message

that children born through MAF are a thing and not a gift, organised a public protest on February 4, 2005 in Maksimir, to which they invited parents with children born with and without MAF, and addressed CBC and the public with the message *"Guess who here is a thing and who a gift"*. The CBC Office for Family soon responded by addressing the public and explaining that the Church never even thought of a child being a thing, regardless of how it was conceived, but it also condemned MAF even more radically, and particularly focused on the seriousness of the crime of embryo destruction.

The discussion was further inflamed by the Croatian Catholic Medical Association, at whose conference the Church's attitudes were defended by Prof. Damir Buković, Prof. Albert Despot, and Ante Klobučar, who listed ample, allegedly scientific, proof that MAF drastically increases the risk of ovarian cancer and causes psychological and physical malformations in children. In addition, the media widely reported Dr. Buković's statement that "the Bible is the best medical book there is". In a rapid response to this, 15 MAF experts took legal action with the Ethics Board of the Croatian Medical Chamber and the State Attorney's Office against the above-mentioned doctors for


The Church's influence on MAF regulation has obviously been considerable during the past year the government bill was not brought before Parliament, and its main provisions became the subject of public discussion, even despite the fact that the bill had already been adopted by the Government.

using false information in order to frighten the public. The Croatian Catholic Medical Association then partly disassociated itself from the problematic claims, saying that the doctors in question were not members of the Association. The organisation RODA demanded that CBC issue a public apology for having deceived the public on the issues of infertility and MAF, as well as for inflaming the public against people who fight against infertility, and for attacking their children. RODA also announced that if a similar situation arose, they would seek legal protection for these people's rights. CBC did not respond to this demand. RODA's spokesperson reported that the organisation received several calls over the next month from worried women who have to face the fears and resistance of their environment regarding MAF, which is a direct consequence of the way MAF has recently been portrayed by Catholic doctors and CBC.

From the overview of the Catholic media, one can see the Church's activity on the promotion of its views regarding MAF within its own community during 2004 and 2005, and particularly on the Day for Life (February 6, 2005), when Rijeka Archbishopric's Office for Family organised the discussion on "Responsible parenthood, truths and

misconceptions regarding artificial insemination". On this occasion, Dr. Josip Grbac pointed out the theological reason - the "inseparability of the procreative element", as well as the bioethical reason - the "problem of the surplus of embryos" as the main grounds for the Church's opposition to MAF. The same explanation was stated in June 2004 by Dr. Valentin Pozaić, the present Assistant Bishop of Zagreb, on the occasion of the discussion of NaPro technology which the Church promotes as the only acceptable alternative to MAF. Disapproval of MAF has also been present in sermons and bishops' other religious appearances in the public.

The Church's influence on MAF regulation has obviously been considerable during the past year - the government bill was not brought before Parliament, and its main provisions became the subject of public discussion, even despite the fact that the bill had already been adopted by the Government. In addition, the main opposition party, SDP, as well as non-governmental organisations for reproductive rights protection gave their approval for the bill and its quick adoption in the Parliament. At the same time the information presented by the Catholic doctors stirred the public and somewhat undermined the understanding of



MAF as a procedure safe for the woman and the baby. A strong moral condemnation of MAF as an act that involves murder, as well as the promotion of marital sex as being the only morally correct option, introduced an entirely new ethical dimension into this public and expert discussion, whose ethical aspect used to be limited to the prevention of abuse of the procedure and illegal trade in genetic material.

In this case the Church clearly showed its willingness to directly comment on new laws, which is significant in the case of MAF, because the Church's potential success in limiting embryo manipulation on bioethical grounds (rather than exclusively for the prevention of illegal trade) could be used as legal basis for a request for the abolition of the abortion law.⁴⁴

On the other hand, the fierceness of the moral condemnation and the questionable validity of the information concerning MAF's negative impact on health seem to have been more harmful to the Church than to the public, especially as the Church's attitudes have received criticism from the leading experts in this field, organisations and politicians, and the media, who seem to have been more inclined towards the Church's critics as well. As the RODE representative Karmen Rivoseki-Simić said: "the Church really misjudged this

case because it touched upon what is most dear to people - their children".

The Catholic Church's activity regarding the right to sex education

Good quality sex upbringing (a term used by the Church), or sex education (a name used by Dr. Štulhofer - an expert in the field), is the most important prerequisite for the realisation of reproductive and sexual rights and health, and this is something that experts, religious and state officials and citizens all agree on, regardless of their political or religious beliefs. The discussion that has been going on since 2004 refers to the issue of defining quality and the set of values and ideological beliefs sex education should be based on. At present, two extra-curricular, optional sex education programmes are used in the Croatian education system: the MEMO AIDS Programme, organised by the Reproductive Health Centre at the Children's Illnesses Clinic in Zagreb, and the Teen STAR Programme, organised by the Teen STAR Organisation for Holistic Sex Education.

The Church has been clear in its attitude towards the two programmes: while it publicly

condemned MEMO AIDS in February 2004, Teen STAR has been implemented in parishes and schools since 1997 with CBC's recommendation, and is regularly presented at expert conferences organised by CBC's Office for Family and Office for Catechesis. In addition, the Board for the Assessment of sex education programmes for primary and secondary schools which was appointed by the Ministry in January 2005 includes 5 Catholic theologians, who make up over a fifth of the Board's members and are the Board's only religious representatives. The Church is, therefore, actively involved in the shaping and implementation of sex education, whose quality and ideological suitability it understands in accordance with the following principles, stated in the religious communities' Joint Statement:

"Our efforts are aimed at a good quality upbringing for children and young people, a system based on authentic scientific insights and our shared ethical principles, which will teach the children how to behave responsibly toward their body and their sexuality, and not reduce the teaching to a mere familiarisation with techniques and methods for the prevention of pregnancy and venereal diseases. It should include sufficient objective information on the development of life before

*birth and promote respect for all its stages, and it should have an introduction to the ethical principles and norms for humane behaviour in the field of human sexuality."*⁴⁵

While this statement seemingly gives a lot of room to Catholic theologians and reproductive health experts to agree on the aims and contents of sex education, (apart from the issue of defining the beginning of human life), the practice is radically different. Regardless of the statement's mention of birth control education as an integral, even though not the central part of sex education, in its special statement in February 2005, CBC severely attacked the MEMO AIDS programme, especially regarding the education of secondary school students about the use of condoms as insufficiently reliable and as ethically unacceptable in protection against HIV. It should also be mentioned that the Church ignored what it usually regards as a central aspect of sexual education, and which is particularly stressed in the MEMO AIDS programme - the development of a responsible attitude towards one's own sexuality by developing young people's communication skills to help them become more assertive and more competent in refusing unwanted sexual contact.

The example of MEMO AIDS shows the strength of the indirect influence of the Church, whose single decisive statement was enough to influence the behaviour of a number of headmasters, who, probably from fear of being denounced as opponents of the Church by their local community, chose to remain passive on the issue of educating young people about scientifically based methods for the prevention of this lethal illness.

MEMO AIDS is the result of the Ministry of Health's cooperation with UN's Global Fund, and is a part of the National programme for fighting HIV/AIDS as a focused, preventative and successful education system, which was supposed to be introduced into most secondary schools in the academic year 2004/05 as an optional programme. After CBC's reaction, the schools' interest in the professional teacher training programmes of MEMO AIDS suddenly dropped from a stable 80% to about 50%.⁴⁶ Even though the signing of a petition was started among the general public against the Church's interference in the programme, and although the president of the National Programme for fighting HIV/AIDS publicly defended the programme, the Government, as a partner in the programme's implementation, remained silent until December 2005, after the president of Global Fund's visit to Croatia, which prompted the Secretary of the Ministry of Science, Education and Sports to send a memorandum to schools with a recommendation that they should become involved in the programme. Dr. Hiršl-Hečej, the manager of the Centre for Reproductive Health and the head of the MEMO AIDS programme, holds the Government responsible for the damage that has been done to the programme, and, as a result of

a drop in the schools' response, the programme will not be able to meet the deadline for achieving its goals.

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The Teen STAR programme became the focus of a public debate in November 2004, when a complaint by the Kontra and Iskorak legal team prompted the Office of the Ombudsperson for Children to analyse the programme and send a recommendation to the Ministry of Education to condition the programme's implementation by having it harmonised with the legal requirements of human rights protection within 15 days. The Office found the existence of discrimination regarding family and marital status, gender and sexual orientation, a lack of accurate and scientific information on birth control, and a violation of a number of provisions of

the Convention on Children's Rights. These violations were related to the obligation of ensuring education on gender equality and human rights as a crucial element of educational programmes, and education for promoting the respect of parents. At the same time, the Ombudsperson for Gender Equality, on the basis of correspondence with the Ministry of Science, Education and Sports regarding the same complaint, assessed the documentation she received about the Teen STAR programme as totally inadequate for making any expert judgments.

While the public entered into a discussion on the suitability of the programme, and the Teen STAR representatives publicly stated that they regard homosexuality as a less worthy form of sexuality (for which organisations Iskorak and Kontra pressed charges with the State Attorney's Office), the Ministry of Education avoided directly stating its position and instead announced the setting up of a special Board for the assessment of all the sex education programmes. This also postponed the Ministry's direct assessment of the amended proposal for a third sex education programme entitled *Human sexuality and the quality of life*, which the Ombudsperson for Children had already confirmed to be consistent with the

international and national standards for the protection and promotion of human rights. The Church, however, continued its public and internal support for Teen STAR, without paying much attention to the Ombudsperson for Children's well-founded claims, and even though the Republic of Croatia and the Holy See both signed the Convention on Children's Rights.

While the influence of the Catholic concept of sex education on the Board's final sex education proposal to the Minister will not be known before the end of April, it is obvious that the Church manages to have a negative impact on the educational institutions' willingness to voluntarily participate in preventative programmes which openly educate young people on birth control and different forms of normal human sexuality. This example also clearly points to Minister Primorac's difficulty in expressing his opinion on the relevance that the Catholic concept of sex education has for state educational programmes. Still, it is not known what influence the Church has on the young people themselves and their understanding of sexuality, considering that research suggests that adolescents in their intimate relationships are not guided by their religion, or by responsibility for their health for that matter

An example of discriminatory practice is the reference to homosexuality found in the textbook for the 8th grade of primary schools, where it is described as a “wrong” and, later on, “sinful form of sexuality”, without any additional explanation of the importance of avoiding discrimination against homosexual people...

(something which should be of Church's concern as well).⁴⁷

The Catholic Church's activity regarding the equality of sexual minorities

Without going into the question of the Catholic dogma on homosexuality, it can be said that the Catholic Church's Catechism rejects discrimination against homosexual persons, some of whom, as the Catechism clearly states, are not Christians, and the Church has no right to expect them to adhere to Catholic rules on sexual abstinence:

However, the Church must have compassion for people with this problem. The Catholic Church's Catechism requires that these people are treated with respect, compassion and consideration. “Any sign of unjust discrimination towards them must be avoided. These people are invited to realise God's will in their life, and if they are Christians, to unite with the sacrifice of the Lord's Cross the difficulties that they may encounter on account of their condition” (no. 2357).⁴⁸

A positive example of the application of its own principle was when the Church did not issue any kind of official condemnation of the Gay Pride Parade in 2004, although the Parade directly addressed the Catholic Church's homophobia. The only religious community which condemned Gay Pride was the Evangelical Church. Also, an analysis of the Catholic web pages indicates that the more detailed theological texts which deal with sexuality, such as the above mentioned Dr. Nikić's lecture, point to the unacceptability of discrimination against homosexual people.

An example of discriminatory practice is the reference to homosexuality found in the textbook for the 8th grade of primary schools, where it is described as a “wrong” and, later on, “sinful form of sexuality”, without any additional explanation of the importance of avoiding discrimination against homosexual people (as is stated in the Catechism). Although Minister Primorac gave CBC the recommendation of the Ombudsperson for Gender Equality to have this formulation harmonised with the Croatian and international legislation, CBC responded by changing the socio-moral category of “being wrong” into the ethical-religious category of “being sinful”, and by doing so managed to disable further questioning of the legality of

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this statement. It is significant that in this case the Minister acted as a mediator in the legalisation of CBC's amendment, without giving his personal views on the Ombudsperson's arguments, and by doing so gave precedence to Croatia's obligations regarding its agreement with the Holy See, and not the national and international legal framework for human rights protection.

There are indications that Catechism teachers risk losing their profession and their job in a state service if CBC deprives them of their licence to teach Catechism, on the grounds of their minority sexual orientation, which, according to the provisions of the Code of Canon Law, is a violation of morality and can be a legitimate reason for revoking their licence. The problem is that in this case these Croatian citizens would not be entitled to protection from discrimination in the work place as is stated in the Labour Act, since the Church, according to the international agreement between Croatia and the Holy See, is not obliged to justify its reasons for revoking the Catechism teachers' licences to the state. Since the state did not foresee such cases or the compensation mechanisms in the case of a potential dismissal (and the loss of profession as well, it seems), its ability to give citizens protection is limited in this

context, and any lawsuit against Croatia at the European Court of Human Rights would likely end unfavourably for the state.⁴⁹

The most widespread form of the Church's negative influence on the equality of sexual minorities is the existence of discriminatory discourse in the Catholic press and the work of Jutarnji List's columnist don Živko Kustić, as well as HTV religious programmes.⁵⁰ Media analysis carried out by the lesbian organisation LORI,⁵¹ which from June 18 to December 17 2004 looked at 723 articles from 145 newspapers, showed that the coverage of this topic in the only religious paper which was analysed - Glas Koncila - was consistent with the average amount of coverage this topic received in the whole sample (11 items in 10 months). However, Glas Koncila had almost three times more items in which the author's attitude towards sexual minorities was negative (18.2%), compared to the share of the author's negative attitude in all of the analysed items (5.8%). It is particularly interesting that in Glas Koncila there is not a single item where the author's attitude is positive, compared to 7.5% of such articles in the total sample. Since the organisations which promote sexual minorities' rights follow very closely the presence of homophobia in the media, it can be expected that the

the Catholic Church during 2004 and the beginning of 2005 focused its “visible” (direct), and “invisible” (indirect), influence on the regulation of human sexuality and reproduction, a public policy area that is particularly sensitive and important in the sense that it is related to an intimate human sphere where the issue of human freedom and responsibility is particularly emphasised.

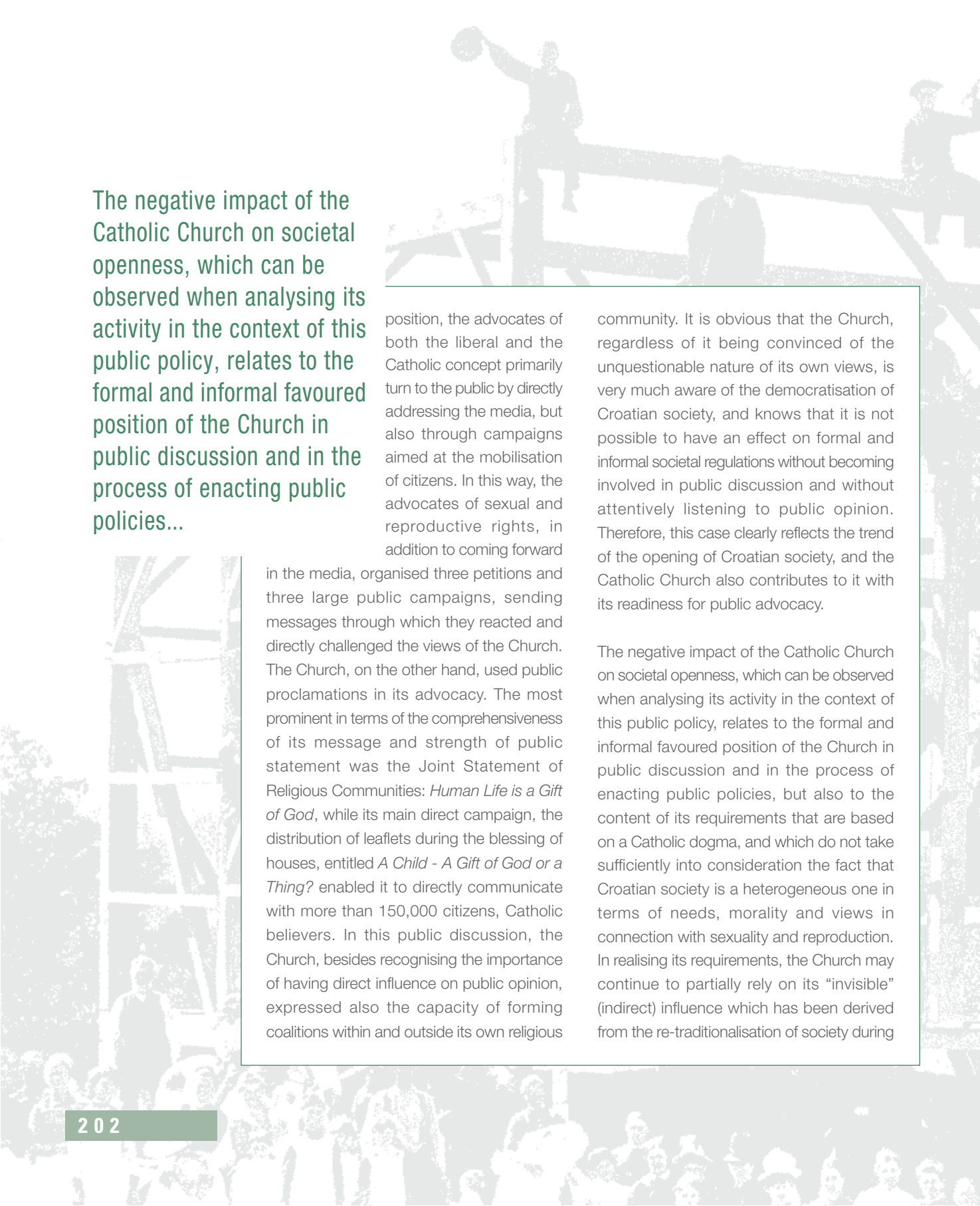
Catholic media and journalists will have increasing opportunity to justify the level of accordance of their work with the national and international legal framework of human rights protection, which is consistent with the Catholic Church's Catechism when it comes to the treatment of discrimination against homosexual people.

Conclusion

Generally speaking, the Catholic Church during 2004 and the beginning of 2005 focused its “visible” (direct), and “invisible” (indirect), influence on the regulation of human sexuality and reproduction, a public policy area that is particularly sensitive and important in the sense that it is related to an intimate human sphere where the issue of human freedom and responsibility is particularly emphasised. The engagement of the Church was especially focused on affecting legislation, education and the attitudes and behaviour of individuals. The intention of the Church to impose Christian/Catholic morality as the *sole* morality in a community which is neither *de iure* Christian/Catholic, nor *de facto* fully Christian/Catholic, is questionable both from

a legal-political and an ethical aspect, as well as from the aspect of societal openness. According to the Croatian Constitution, Croatia is a state separate from the Church, while the Church aspires to the universality of its particular ethical position. This leads to a conflict between Catholic sexual morality and politics which is based on the concept of sexual and reproductive rights, supported by the international legal order on the protection of human rights. In the public, both positions are presented in terms of their diversity in relation to the opposing position (“Catholic” vs. “liberal” standpoint), where the insistence of the Church in characterising individuals, societies and states that favour the liberalisation of the policy of abortion, medically-assisted conception and euthanasia, as advocates of the “culture of death”, stands out in its severity and exclusivity.

The activity of the Church should be observed in the context of a public debate characterised by growing dynamics and pluralism which prevail in the questioning attitudes of the media and civil initiatives promoting diverse values. This is something that is undoubtedly indicative of the opening of Croatian society. Regardless of the fact that they are convinced in the unquestionable quality of their own



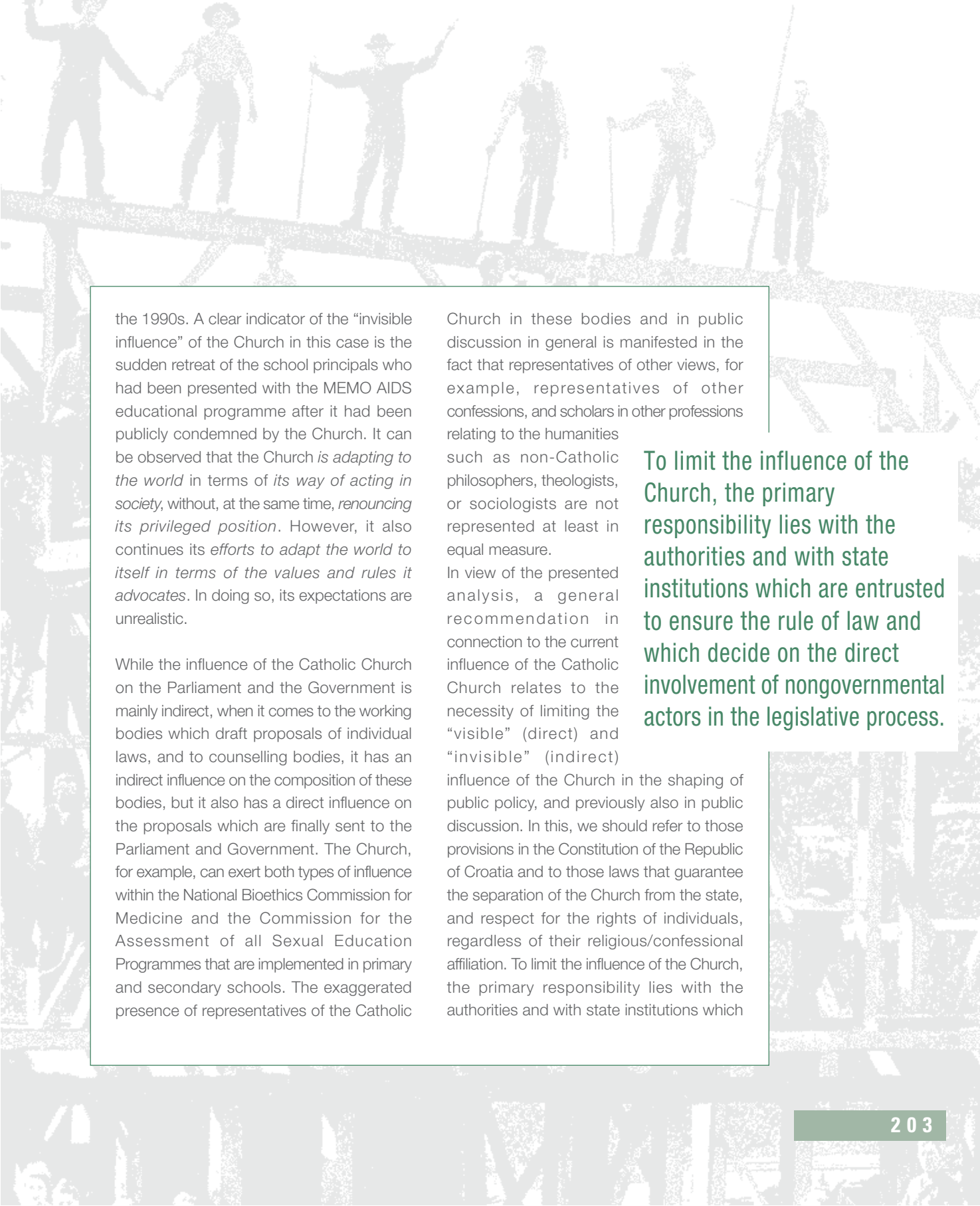
The negative impact of the Catholic Church on societal openness, which can be observed when analysing its activity in the context of this public policy, relates to the formal and informal favoured position of the Church in public discussion and in the process of enacting public policies...

position, the advocates of both the liberal and the Catholic concept primarily turn to the public by directly addressing the media, but also through campaigns aimed at the mobilisation of citizens. In this way, the advocates of sexual and reproductive rights, in addition to coming forward

in the media, organised three petitions and three large public campaigns, sending messages through which they reacted and directly challenged the views of the Church. The Church, on the other hand, used public proclamations in its advocacy. The most prominent in terms of the comprehensiveness of its message and strength of public statement was the Joint Statement of Religious Communities: *Human Life is a Gift of God*, while its main direct campaign, the distribution of leaflets during the blessing of houses, entitled *A Child - A Gift of God or a Thing?* enabled it to directly communicate with more than 150,000 citizens, Catholic believers. In this public discussion, the Church, besides recognising the importance of having direct influence on public opinion, expressed also the capacity of forming coalitions within and outside its own religious

community. It is obvious that the Church, regardless of it being convinced of the unquestionable nature of its own views, is very much aware of the democratisation of Croatian society, and knows that it is not possible to have an effect on formal and informal societal regulations without becoming involved in public discussion and without attentively listening to public opinion. Therefore, this case clearly reflects the trend of the opening of Croatian society, and the Catholic Church also contributes to it with its readiness for public advocacy.

The negative impact of the Catholic Church on societal openness, which can be observed when analysing its activity in the context of this public policy, relates to the formal and informal favoured position of the Church in public discussion and in the process of enacting public policies, but also to the content of its requirements that are based on a Catholic dogma, and which do not take sufficiently into consideration the fact that Croatian society is a heterogeneous one in terms of needs, morality and views in connection with sexuality and reproduction. In realising its requirements, the Church may continue to partially rely on its “invisible” (indirect) influence which has been derived from the re-traditionalisation of society during



the 1990s. A clear indicator of the “invisible influence” of the Church in this case is the sudden retreat of the school principals who had been presented with the MEMO AIDS educational programme after it had been publicly condemned by the Church. It can be observed that the Church *is adapting to the world* in terms of *its way of acting in society*, without, at the same time, *renouncing its privileged position*. However, it also continues its *efforts to adapt the world to itself in terms of the values and rules it advocates*. In doing so, its expectations are unrealistic.

While the influence of the Catholic Church on the Parliament and the Government is mainly indirect, when it comes to the working bodies which draft proposals of individual laws, and to counselling bodies, it has an indirect influence on the composition of these bodies, but it also has a direct influence on the proposals which are finally sent to the Parliament and Government. The Church, for example, can exert both types of influence within the National Bioethics Commission for Medicine and the Commission for the Assessment of all Sexual Education Programmes that are implemented in primary and secondary schools. The exaggerated presence of representatives of the Catholic

Church in these bodies and in public discussion in general is manifested in the fact that representatives of other views, for example, representatives of other confessions, and scholars in other professions relating to the humanities such as non-Catholic philosophers, theologists, or sociologists are not represented at least in equal measure.

In view of the presented analysis, a general recommendation in connection to the current influence of the Catholic Church relates to the necessity of limiting the “visible” (direct) and “invisible” (indirect)

influence of the Church in the shaping of public policy, and previously also in public discussion. In this, we should refer to those provisions in the Constitution of the Republic of Croatia and to those laws that guarantee the separation of the Church from the state, and respect for the rights of individuals, regardless of their religious/confessional affiliation. To limit the influence of the Church, the primary responsibility lies with the authorities and with state institutions which

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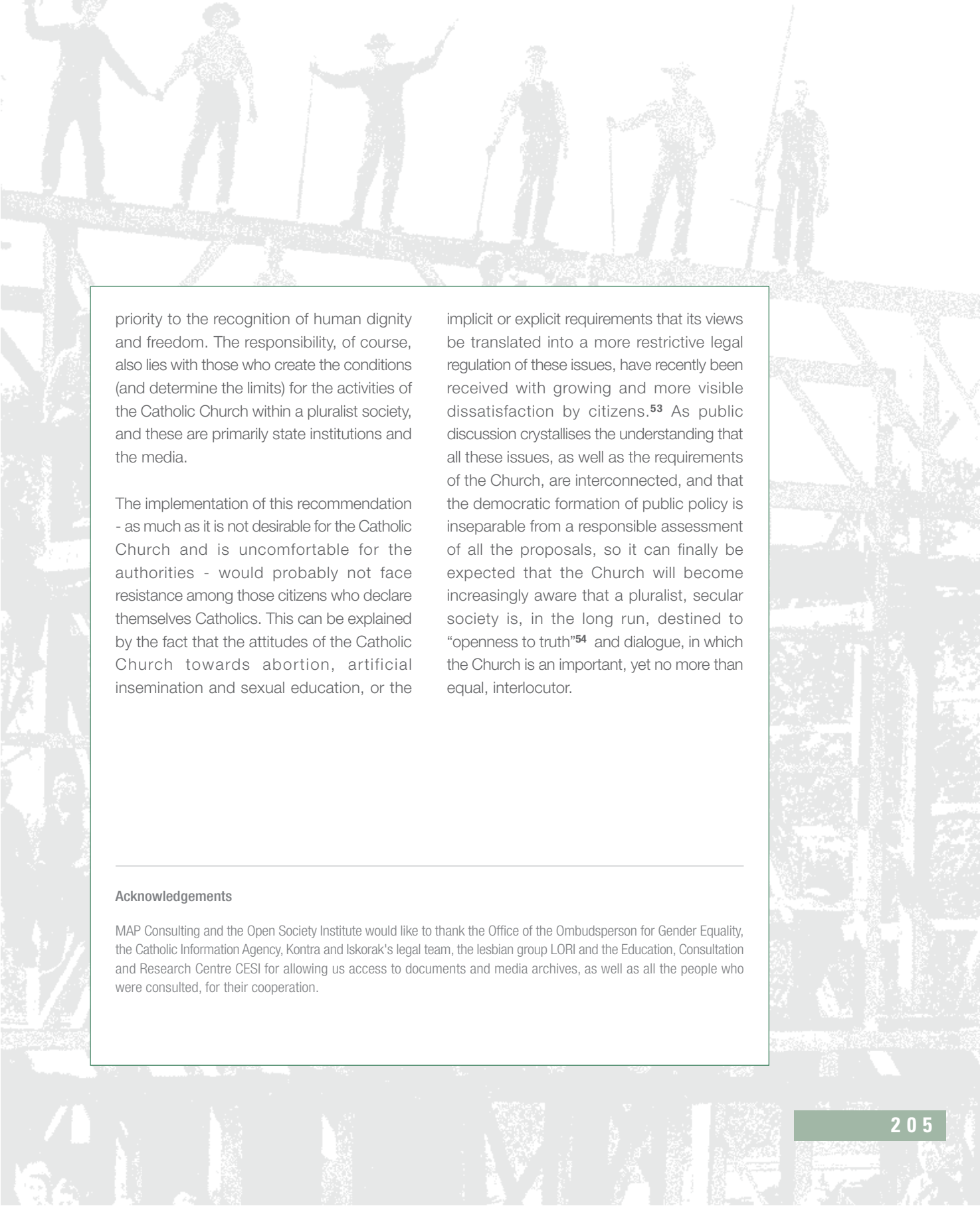
The Church should carefully consider its attitude towards democracy and pluralism, both from the aspect of the role of the Church in a democratic society, and from the aspect of the internal democratisation of the Church itself as an institution, and the Church as a community of believers.

are entrusted to ensure the rule of law and which decide on the direct involvement of nongovernmental actors in the legislative process. For this purpose, it would be useful to conduct an expert analysis of the degree of harmonisation of the provisions of international agreements with the Holy See on one hand, with the national legislation and international conventions dealing with the protection of human rights which the Republic of Croatia has signed on the other hand, in order to consider realistic strategies of meeting different and, in some cases, especially in the area of education, conflicting, obligations.

The need to limit the influence of the Church does not mean that the Catholic Church as an institution, or experts with Catholic views, should not participate in public discussion, or in counselling bodies, on issues that directly relate to specific public policies, including the policies of sexual and reproductive health and rights. The stress is on the significant difference between *discussion*, or *dialogue*, on specific ethical or social issues with Catholic theologians in suitable forums on the one hand, and *negotiations* of the state with the Catholic Church as an institution about the legal-political regulation of these issues on the other hand.

In this sense, the media, state institutions and NGOs should commit themselves to discussing with groups and individuals in the Catholic Church as an institution and as a community of believers who are prepared for public discussion, without implications of the unquestionable nature of the official Catholic science in the context of considering specified public policies. In this case, there is considerable room for agreement on fundamental values related to the policy of reproductive and sexual health and rights, such as responsibility, self-respect, respect for a person's dignity, gender equality, honesty, solidarity, and non-violence.

As for the Church, it should carefully consider its attitude towards democracy and pluralism, both from the aspect of the role of the Church in a democratic society, and from the aspect of the internal democratisation of the Church itself as an institution, and the Church as a community of believers. This also means that the Church, instead of emphasising the power of the Catholic Church as an institution, should focus on the responsibility of individuals who consider themselves Catholics, which also implies the responsible activity of the Catholic Church as an institution in the spirit of the Vatican II Council's Declaration *Dignitatis Humanae*⁵² which gives

A black and white photograph of six construction workers standing on a horizontal steel beam high above the ground. They are wearing hard hats and safety harnesses. Some are holding long vertical poles or tools. The background shows a complex network of steel beams and structural elements of a building under construction.

priority to the recognition of human dignity and freedom. The responsibility, of course, also lies with those who create the conditions (and determine the limits) for the activities of the Catholic Church within a pluralist society, and these are primarily state institutions and the media.

The implementation of this recommendation - as much as it is not desirable for the Catholic Church and is uncomfortable for the authorities - would probably not face resistance among those citizens who declare themselves Catholics. This can be explained by the fact that the attitudes of the Catholic Church towards abortion, artificial insemination and sexual education, or the

implicit or explicit requirements that its views be translated into a more restrictive legal regulation of these issues, have recently been received with growing and more visible dissatisfaction by citizens.⁵³ As public discussion crystallises the understanding that all these issues, as well as the requirements of the Church, are interconnected, and that the democratic formation of public policy is inseparable from a responsible assessment of all the proposals, so it can finally be expected that the Church will become increasingly aware that a pluralist, secular society is, in the long run, destined to “openness to truth”⁵⁴ and dialogue, in which the Church is an important, yet no more than equal, interlocutor.

Acknowledgements

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¹ The interviews included those with the representatives of the Croatian Bishops' Conference Press Office, the Office of the Ombudsperson for Gender Equality, the Reproductive Health Centre at the Children's Illnesses Clinic, the legal team of the organisation for the protection of sexual minorities Kontra and Iskorak, UNDP, CESI, the Organisation RODA, the Women's Network Croatia and the member of the Board for the assessment of sex education programmes.

² This narrow view of the "Catholic Church" largely comes from the Croatian Catholic Church's understanding of itself, that is, it could be perceived as unjustified if the Catholic Church in Croatia itself did not, implicitly or explicitly, insist on being represented that way.

³ European Parliament Resolution on Sexual and Reproductive Health and Rights (2001/2128(INI)), P5_TA(2002)0359.

⁴ Program of Action of the International Conference on Population and Development, Part Two: Statements and Reservations on the Programme of Action, 1994, www.unfpa.org/icpd/icpd_poa.htm; Fourth World Conference on Women's Platform for Action, Chapter V: Reservations and interpretative statements on the Beijing, 1995. www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en

⁵ The international nongovernmental organisation Catholics for Free Choice launched a continuous campaign "See Change" five years ago for the abolition of the Holy See's observation status with the UN, arguing that the Holy See is not a state, but an extraterritorial religious entity, and that its status had never been voted on at any UN General Assembly.

⁶ For instance, the liberation of Churches in Eastern Europe is seen as a well of hope for the restoration of Catholicism in Europe in the Pope's Post-Synodal Apostolic Exhortation "Ecclesia in Europa", June 28, 2003; "A Caricature of a Religion", interview with Dr. Srdan Vrcan, author: Hrvoje Prnjak, Feral Tribune, August 13, 2004, pp. 16-17.

⁷ Zagreb, July 26, 2004, IKA, from www.veritas.com.hr/panorama/hrvatska_najkatolickija_zemlja.php

⁸ Marinović Bobinac, Ankica, "Analysis of the contents of the Catholic Church's attitudes", *Liberalism and Catholicism in Croatia (Part II), Zagreb, March 5th and 6th*, Hans-Georg Fleck (ed.), Friedrich Naumann Foundation, Zagreb, 1999, pp. 381-384.

⁹ Puhovski, Žarko, "Košulja otkana-aporije političke realizacije katoličkog svjetonazora u liberalnom okruženju", *Liberalism and Catholicism in Croatia (Part II), Zagreb, March 5th and 6th*, Hans-Georg Fleck (ed.), Friedrich Naumann Foundation, Zagreb, 1999, pp. 343-353.

¹⁰ Padjen, Ivan, "Croatian Catholicism and Nationalism in the 1990s: legal theory perspective", *Liberalism and Catholicism in Croatia, Split, Vila Dalmacija June 2nd*, Hans-Georg Fleck (ed.), Friedrich Naumann Foundation, Zagreb, 1998, pp. 247-248; 253- 261.

¹¹ "A Caricature of a Religion", interview with Dr. Srdan Vrcan, author: Hrvoje Prnjak, Feral Tribune, August 13, 2004, pp. 16-17.

¹² Puhovski, Žarko, "Košlja otkana-aporije političke realizacije katoličkog svjetonazora u liberalnom okruženju", *Liberalism and Catholicism in Croatia (Part II)*, Zagreb, March 5th and 6th, Hans-Georg Fleck (ed.), Friedrich Naumann Foundation, Zagreb, 1999, pp. 343-353.

¹³ Agreement between the Holy See and the Republic of Croatia on the cooperation in the field of education and culture, NN2/97, Agreement between the Holy See and the Republic of Croatia on providing Catholic guidance for Catholic believers, members of the army and the police of the Republic of Croatia NN2/97, Agreement between the Holy See and the Republic of Croatia regarding legal matters NN3/97, Agreement between the Holy See and the Republic of Croatia regarding economic matters NN18/98.

¹⁴ Unlike Spain, where agreements with the Holy See are renewed every year.

¹⁵ Padjen, Ivan, "Croatian Catholicism and nationalism in the 1990s: legal theory perspective (II)", *Liberalism and Catholicism in Croatia (Part II)*, Zagreb, March 5th and 6th, Hans-Georg Fleck (ed.), Friedrich Naumann Foundation, Zagreb, 1999, pp. 200 -207.

¹⁶ Act on the Legal Status of Religious Communities, NN 83/2002. Schools which fulfil the required quota of 7 students who are members of a minority religion can organise special religious education for these students.

¹⁷ *Bureau of Democracy, Human Rights, and Labour U.S. Department of State*, "Croatia: International Religious Freedom Report 2004", September 15, 2004, www.state.gov/g/drl/rls/irf/2004/35447.htm; International Helsinki Federation for Human Rights, Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2004 (Events of 2003): Croatia, 2004. www.ihf-hr.org/viewbinary/viewdocument.php?

¹⁸ In the 2004 Christmas interview he gave to Vjesnik, Cardinal Bozanić stated that the agreement with Croatian Radio Television (HRT) is not adhered to fully and he criticised HRT for allowing citizens' religious and other feelings to be disrespected. He also expressed his desire for the other religious communities to better regulate their status on HRT.

¹⁹ The Constitutional Court of the Republic of Croatia, U-I/825/2001, Dismissal of the proposal for the assessment of the legislative body's acts, January 14, 2001.
www.usud.hr/usud/praksaw.nsf/Pojmovi/C1256A25004A262AC1256E2000312A73?OpenDocument

²⁰ In February 1998, during a Parliamentary discussion of the Agreement with the Holy See regarding legal matters, Representative Vladimir Primorac was the only one who pointed to the inequality for the religious communities and citizens which the Agreement resulted in, whereas in theological circles this issue was not seen as crucial. Compare: Padjen, Ivan, "Croatian Catholicism and nationalism in the 1990s: legal theory perspective (II)", *Liberalism and Catholicism in Croatia (Part II)*, Zagreb, March 5th and 6th, Hans-Georg Fleck (ed.), Friedrich Neumann Foundation, Zagreb, 1999, pp. 217; 204 -207.

²¹ Don Anton Šuljić's report on the presence of the Church in the Croatian media, Report from the 39th plenary session of the Croatian Bishops' Conference, Zadar, October 10 -14, 2004.

²² For instance, new guidelines of the Bishops' Conference of England and Ireland on the discrimination against homosexual persons were published in February 2005, and they state the importance of adhering to state anti-discrimination laws. www.vaticanradio.org/radiogiornale/ore14/2005/febbraio/05_02_13.htm#Inghilterra

²³ Based on the Letter of the Congregation for Faith concerning Catholic bishops and the pastoral for homosexual persons (1986), according to Ana Maria Grünfelder, "Homosexuality - Catholic attitudes and assessment", June 24, 2004, www.gay.hr

²⁴ Padjen, Ivan, "Croatian Catholicism and Nationalism in the 1990s: legal theory perspective", *Liberalism and Catholicism in Croatia, Split, Vila Dalmacija, June 2nd*, Hans-Georg Fleck (ed.), Friedrich Neumann Foundation, Zagreb, 1998, pp. 251.

²⁵ Vesna Kesić, "From worship to rape or from motherland to the Croatian 'fallen woman'", Bread and Roses, no. 1, 1994. <http://www.zinfo.hr/hrvatski/stranice/izdavastvo/kruhiruze/kir1/1/silovanje.htm>

²⁶ Shiffman, Jeremy, Marina Škrabalo and Jelena Subotić (2002). "Reproductive Rights and the State in Serbia and Croatia" *Social Science and Medicine*, Vol. 54, Issue 4:625-642.

²⁷ In the 1974 Constitution of the Socialist Republic of Croatia, Article 248 referred to the inviolability of human life, apart from exceptional situations when the death penalty is applied. In the 1990 Constitution of the Republic of Croatia, Article 21 refers to the right to live and the non-existence of the death penalty.

²⁸ In the 1996 research entitled Social Structure and the Quality of Life in the Transition Period, carried out by the Centre for the Research of Transition and Civil Society, 58% of participants fully or partly disapproved of the ban on abortion, and only 34% of religious believers approved of a complete ban on abortion. According to Marinović Jerolimov, Dinka "Catholicism in Croatia" some empirical indicators, *Liberalism and Catholicism in Croatia (Part II), Zagreb, March 5th and 6th*, Hans-Georg Fleck (ed.), Friedrich Neumann Foundation, Zagreb, 1999, p. 369. Results of a telephone survey GfK carried out in March 2004 using a representative sample of 2,116 citizens aged 18-74, from all the counties and of both genders, point to the existence of a regional and social division, with greater support for the Church's views in smaller settlements (up to 2,000 inhabitants) in Slavonia and Dalmatia, and among people with a lower level of education <http://www.gfk.hr/press/slicice.htm>

²⁹ The guidelines were published in 2002, in the new Directory for the family pastoral of the Church in Croatia, <http://varazdin.hbk.hr/Aktualno/A095a.htm>

³⁰ "Family - the path of the Church and the people", Pastoral letter of Croatian Bishops on the occasion of the Pope John Paul II's third apostolic visit to Croatia, April 11, 2003. www.papa.hr/vijesti_1.html?news_ID=251

³¹ "Cardinal Tujillo on family and the issue of sex education", Glas Koncila's interview with the president of the Papal Council for Family, IKA, July 16, 2004.

³² The Law on Health Measures for Exercising the Right to Free Choice Regarding Birth (1978), which in its title refers to a Constitutional provision which has been omitted in the meantime.

³³ Croatian Institute for Public Health "Izvešće o prekidima trudnoće u javnim ustanovama Hrvatske tijekom 2003. godine" (Report on terminations of pregnancy in Croatian public institutions in 2003). Author Dr Dragica Katalinić, Zagreb, July 2004.

³⁴ Stanley K. Henshaw, Susheela Singh and Taylor Haas (1999). "Recent Trends in Abortion Worldwide", Family Planning Perspectives, Vol. 25, No 1. The research also includes incomplete data for Croatia, Macedonia, Slovenia, and Yugoslavia, in the period from 1975 to 1996.

³⁵ At the end of March 2005, the Women's Network Croatia carried out a telephone poll in all 33 health institutions licensed to perform abortion, to learn about the availability of abortion. The results showed that in almost a third of these institutions abortion is not performed, its price varies 400%, and women are even instructed to have abortion illegally. These results prompted the Women's Network to ask the Ministry of Health to carry out a systematic investigation into the real availability and legality of abortion in Croatia. This initiative also came in response to the Women's Network Croatia's January protest against the uninterrupted distribution of pro-life leaflets and pro-life activity in public health institutions. Minister Ljubičić agreed with this and stated that such messages did not belong in doctors' waiting rooms, and called on citizens to report illegal abortions, but failed to carry out any kind of investigation. www.zenska-mreza.hr

³⁶ Glas Koncila, comment "Abortion, young people, Minister and the Church", March 14, 2005.

³⁷ Religious communities' joint statement "Human life is a gift from God", December 16, 2004, <http://split.hbk.hr/MEDJURELIGIJSKI.htm>

³⁸ Vesna Kesić, "From worship to rape or from motherland to the Croatian 'fallen woman'", Bread and Roses, no.1, 1994 <http://www.zinfo.hr/hrvatski/stranice/izdavastvo/kruhiruze/kir1/1silovanje.htm>

³⁹ The feminists also believe that former Health Minister Hebrang played a crucial role (not publicly known), in preventing the bringing of a new, more restrictive abortion bill before the government in 1995 by ignoring it. Compare Shiffman, Jeremy, Marina Škrabalo and Jelena Subotić (2002). "Reproductive Rights and the State in Serbia and Croatia" *Social Science and Medicine*, Vol. 54, Issue 4:625-642.

⁴⁰ "A ban on abortion would take us 100 years back", by Kristina Turčin, Jutarnji list, February 19, 2005, p. 9.

⁴¹ On Women's Day in 2003, the Women's Network of Croatia held its first protest since 1995 in front of the Government's building and the Parliament on account of the insufficient implementation of the national policy for the promotion of gender equality and the protection of women's reproductive rights. On February 26, the women's group Centre for Citizen Initiatives in Poreč held a protest, carrying banners which read *My uterus, my ovaries; they cannot be decided on by state and Church officials!*

⁴² This reason was dismissed by the member of the working group, Dr. Šimunić, who explained that the bill had already been adopted by the Ministry of European Integration.

⁴³ Religious Communities joint statement - "Human life is a gift from God", December 16, 2004, <http://split.hbk.hr/MEDJURELIGIJSKI.htm>

⁴⁴ Comment by Kristijan Grđan, member of Kontra and Iskorak's legal team. The comment was based on the conversation with Ema Bonnino, an international expert on women's human rights.

⁴⁵ Religious communities' joint statement - "Human life is a gift from God", December 16, 2004, <http://split.hbk.hr/MEDJURELIGIJSKI.htm>

⁴⁶ Based on the consultation with the head of the MEMO AIDS programme and the representative of UNDP Croatia, in charge of the issue of HIV/AIDS prevention.

⁴⁷ Štulhofer, Aleksandar, Gordan Anterić and Saša Šlosar, "Sexual permissiveness, egalitarianism and responsibility: longitudinal research on sexuality in late adolescence, 1998-2003", *Sociology Journal*, No 1-2, Croatian Sociology Association, Zagreb, 2004. www.hsd.hr/revija/sadrzaj.htm; Mandari, Valentina, "The piety of adolescents in the city of Zagreb", *Kateheza*, 22 (2000)2, pp. 175-179.

⁴⁸ Dr. Mijo Nikić, "Moral aspects of sex education", lecture at the symposium "Sexuality in adolescence", October 5, 2002 in Zagreb, Faculty of Philosophy of the Society of Jesus, organised by the Croatian Catholic Medical Association in cooperation with the Croatian Catholic Association of Educational workers and the CBC's Office for Family.

⁴⁹ This statement is based on the interview with Kristijan Grđan, member of Kontra and Iskorak's legal team from March 19, 2005, and direct insight into the correspondence between the legal Team and the Office of the Ombudsperson for Gender Equality.

⁵⁰ Kontra and Iskorak, "Report on the status of sexual and gender minorities human rights in the Republic of Croatia in 2004", Zagreb, 2005 (unpublished document). www.gay.hr

⁵¹ The table in SPSS, containing the data and analysis of Glas Koncila's material, with thanks to LORI for allowing the material to be viewed; LORI, "The media and LGBT community, manual for journalists on the LGBT community", Rijeka, 2004.

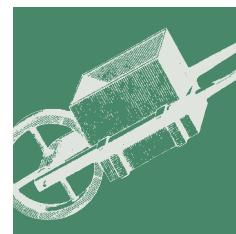
⁵² Kušar, Stjepan, "Inkarnacija, tolerancija i djelovanje Crkve", *Liberalizam i katolicizam u Hrvatskoj (Part II)*, Zagreb 5 and 6 March, prepared by Hans-Georg Fleck, Zagreb: Friedrich Naumann Foundation 1999, pp. 309, 318- 332.

⁵³ *Jutarnji List* of 28 March 2005 presents the findings of an internal public opinion survey commissioned by the Church, according to which 90% of participants believe that the Church should remove political topics from its sermons.

⁵⁴ Skledar, Nikola, "Načela i smisao dijaloga", *Liberalizam i katolicizam u Hrvatskoj (Part II)*, Zagreb 5 and 6 March, prepared by Hans-Georg Fleck, Zagreb: Friedrich Naumann Foundation, 1999, p. 437.

The position of the Serbian national minority in Croatia 2004 - positive steps, key issues and recommendations

Nataša Škrbić



Introduction: Subject matter and method

One of the most complex political issues of the Croatian post-communist and post-war transition is the issue of relationship towards national minorities, the Serb minority in particular. According to the 2001 Census, 7.5% of the Croatian population, or 331,383 persons, are members of sixteen national minorities, the most numerous being the Serb minority with 201,631 persons, or 4.5% of the total population.¹ According to a number of indicators, the Serbian minority is in a particular position. The change of status from being a constituting people in former Yugoslavia to obtaining the status of a national minority in the Republic of Croatia sets this ethnic group the challenge of inventing a new identity in the framework of the political community. Although this is a minority with the largest number of citizens, its share in the population has been drastically reduced due to the most recent war events. It went from 13% (according to the 1991 Census) to 4.5% (according to the 2001 Census). About 300,000 Croatian Serbs left Croatia during, and after, the war. It is estimated that about 200,000 refugees, mainly Croatian Serbs, are still in the neighbouring countries, most

of them in Serbia and Montenegro, while a smaller part are in Bosnia and Herzegovina and abroad. This drastic drain of an ethnic group has not yet been sufficiently raised as a problem in Croatia, neither is there a clear view of all the causes and consequences of such a situation.

Pursuant to many international agreements and political accession criteria imposed by the EU, Croatia, through its policy on minorities, has taken on the task of removing the negative consequences of the inter-ethnic conflict that arose in the war, and the problematic relations between the majority Croatian people and the members of the Serbian minority after the war. According to many, with its Constitutional Act on the Rights of National Minorities of 2002, Croatia is today at the very top of European legal solutions dealing with the legislative regulation of minority rights, although there is still room for developing and complementing the institution of protection and development of minority rights. As a member of the Council of Europe since 1996, Croatia has ratified the European Convention for the Protection of Human Rights.² Pursuant to Article 140 of the Constitution of the Republic of Croatia, international agreements are part of the internal legal order of the Republic of Croatia and supersede national ones.


Since the end of the war in Croatia, Serbian returnees, but also those Serbs who had remained in the country, have been facing a number of discriminatory policies which prevent them from exercising their basic human rights.

This case study consists of three key parts as well as a conclusion with recommendations: 1) Brief overview of the political and social context of the Serbian minority until 2003; 2) Changes after the 2003 elections: the political strategy of HDZ regarding minority Serbs; 3) Perspectives of the Serbian minority on the positive steps, obstacles and recommendations for the period of 2004 and the beginning of 2005; 4) Conclusion and recommendations. The methods used are qualitative ones, and include an analysis of texts from the media, documents and reports of international and local NGOs, observation of a thematic meeting on housing care in post-war areas, an individual and a group interview with 10 members of minorities, and consultations with UNHCR representatives.

Brief overview of the political and social context of the Serbian minority until 2003

Since the end of the war in Croatia,³ Serbian returnees, but also those Serbs who had

remained in the country, have been facing a number of discriminatory policies which prevent them from exercising their basic human rights. Two key discriminatory laws were adopted after the war, whose consequences are still being felt. Pursuant to the Act on the Temporary Takeover and Administration of Specified Property of 1995, about 19,000 housing units, almost fully owned by citizens of Serbian nationality, were allocated to refugees, mostly Croats from Bosnia and Herzegovina, preventing for a considerable period of time the return of the original owners to their homes. The second Act on Areas of Special State Concern of 1996 allowed the temporary tenants to become owners of the property after ten years of uninterrupted use. In spite of efforts invested by the international community, and specific assistance provided for the reconstruction of destroyed houses, until the Programme of Return was passed in 1998, there had been no serious steps made towards the reconstruction of destroyed houses. However, even after that, it was considered that the efforts made for the reconstruction of Serb-owned houses by the Croatian Government, except in cases of cooperation with the international community, were insignificant. As a consequence of negative policies, long-term absence, and



Pursuant to the Act on Citizenship and Electoral Laws, citizenship, and the right to vote that accompanies it, is granted to Croats living abroad, and not in any way connected with their former homeland, only on the basis of ethnic belonging.

numerous obstacles to return, a large number of Serbian refugees had not returned, and neither could it be foreseen that this situation would change.

The change of government in 2000 led for the first time to the adoption of more serious measures, including budget plans. However, numerous obstacles to return had had their effect in discouraging return or placing the Serbian minority in a long-term position of inequality.

As indicated by the sociologist Županov, it is not possible to restore the pre-war demographic structure, so that the “dislocation of the population will be expressed as an irreversible process. However, the new facticity will not cease to be a problem but will be built into the new stability of this area” (Županov, 1998:219). Another sociologist, Katunarić, considers that the post-war reintegration and restoration of coexistence of Serbs and Croats will be difficult, but the key issue is the “official or unofficial” strategy of the political leadership: “If the tone of this area of politics continues to be marked by ethnic homogenisation together with a component of ethnic cleansing, the amount of hate among the population will become a more or less irrelevant fact. What is most important, as in

any political process, is the official or unofficial attitude taken by the political leadership” (Katunarić: 280-281).

It was only the outcome of the parliamentary and presidential elections in 2000 that changed this political “tone”, leading to the greatest political changes since the elections of the 1990s. After the elections, there was also an expectation that the Croatian Government of that time would work on intensifying the return of Serbian refugees to Croatia. In the period of 2000-2002, the key laws dealing with the issue of return were reviewed, and the discriminatory provisions, which had earlier favoured ethnic Croats, were eliminated, but the legal solutions continued to primarily protect the interests of temporary tenants over the original owners, because the rights of the latter could only be exercised after alternative accommodation had been found for the temporary tenants.⁴ Pursuant to the Act on Citizenship and Electoral Laws, citizenship, and the right to vote that accompanies it, is granted to Croats living abroad, and not in any way connected with their former homeland, only on the basis of ethnic belonging. On the other hand, the Government of 2000 did not introduce a provision granting to many Croatian Serbs exiled in 1995, who wished to become

There have been three crucial and specific political moves made by the HDZ Government regarding the Serbian minority - The Agreement on Cooperation with SDSS, the signing of a bilateral agreement on the protection of minorities between Croatia and Serbia and Montenegro, and support given to the work of the Council for National Minorities and the councils of national minorities.

citizens again, the right to prove their status with documents in order to be given the right to vote, and, eventually, also the right to return. Not even today has an amendment to the law been passed which would resolve this problem and create equal opportunities for obtaining citizenship, regardless of ethnic belonging.

Besides the above-mentioned legal amendments, the Government has also introduced specific changes in connection with the unfavourable conditions related to the reconstruction of houses when the Serbs for the first time began more intensive reconstruction compared with that of the Croats. However, according to the opinions of the Croatian majority, as well as the minority Serbian community, the steps that Račan's Government took were not sufficient, especially in regard to the right of real estate owners and revoked tenancy rights. Although this was the Government that "paved the way" through numerous legal regulations and measures working towards an intensification of return and the abolishment of discriminatory provisions, it did not do enough, and the general impression remains that it lacked real political will (or courage) to fully accept and implement the protection of the basic human rights of all its citizens, regardless of their

nationality or faith. The 2003 elections, leading to HDZ regaining power, led to new political changes in Croatia, to the strengthening of the orientation towards European integration and, for many, an unexpected, but positive, turn in minority policy.

Changes after the 2003 Elections: the political strategy of HDZ regarding minority Serbs

There have been three crucial and specific political moves made by the HDZ Government regarding the Serbian minority - The Agreement on Cooperation with SDSS (Independent Democratic Serbian Party), the signing of a bilateral agreement on the protection of minorities between Croatia and Serbia and Montenegro, and support given to the work of the Council for National Minorities and the councils of national minorities. In addition to specific political moves, the political leaders also sent for the first time an explicit message to the public, at a symbolic level, on the attitude towards the Serbian minority, compressed in Sanader's Christmas greeting "*Christ is born*" to the citizens of the Orthodox faith, and in

the visit to a family of returnees in the hinterland of Zadar.

In December 2003, the Independent Democratic Serbian Party (SDSS), in exchange for giving a vote of confidence to Ivo Sanader's Government, signed the "Agreement on Cooperation between the New Government and the Independent Serbian Democratic Party in the Croatian Parliament".

Among other things, the Agreement contains six points relating to the full return of refugees, the repossession of illegally occupied Serbian property within 6 months, and damages for demolished property outside the areas referred to by the applicable Reconstruction Act. In this Agreement, the government undertook to implement within 3 months the provisions of the Constitutional Act on National Minorities which guarantee the participation of minorities in bodies of local and regional government, the foundation of councils of national minorities as counselling bodies at the local level, and the Council for National Minorities as an umbrella organisation promoting national minority interests at the national level, the allocation of budget funds, and the introduction and participation of minorities in public and political life which is

derived from the Constitutional Act.⁵ As agreed, the Government will fund the training of members of local minority councils, established to advise local government bodies on political issues of interest for minority communities.⁶

In December 2004, Prime Ministers Sanader and Koštunica also signed the Agreement on the Mutual Protection of National Minorities between Serbia and Montenegro and Croatia. Pursuant to this Agreement, both governments are committed to preserving the existing level of protection of minority rights while the "mother states" commit themselves to financially assisting the preservation of the cultural identity of their minorities.

At a symbolic level, one of the most significant events, covered by all the media, including the main news programme of national television, was the visit of the Prime Minister and the Speaker of Parliament to the Serbian National Council in Zagreb at its Christmas reception. On that occasion, Prime Minister Sanader forwarded his greetings to Orthodox believers with the traditional *"Christ is born"*, followed by, *"Being a new government, we are proud that we have succeeded in establishing cooperation and in signing an*

In its Human Rights Report for Croatia, the State Department mentions that the Croatian Government in 2004 strengthened its efforts on the return of refugees, especially in the area of reconstruction and restitution of illegally occupied houses.

agreement with representatives of the Serbian and other national minorities. We are proud of that, and, as a government, we will act in such way to heal the wounds caused during the war. We have agreed to make the humanitarian aspects of our cooperation a priority and we will take this into account". (Novi list, 7 January 2004). He also added that his "Government wishes to show, both at a demonstrative and also at a substantial level, that the manner in which it began its mandate does in fact represent what it really means". On this occasion, the Speaker of the Parliament, Vladimir Šeks, who had arrived with the Prime Minister, said that "The bitter and tragic experiences of our recent past must be left behind... The time of misunderstandings and discord is behind us. Now a time is coming when we will build a better and happier future together and in harmony". The reactions of the president of the Serbian People's Council, Milorad Pupovac, were also optimistic, "In Croatia a time of new relations is coming which the Government of the new Prime Minister defines in its programme and in its first steps [and that the Serbs in Croatia now] have access to a form of cooperation and partnership which will additionally encourage and stimulate Croatia to meet general expectations".

Another symbolic move covered in the media

was the visit to returnees in Benkovac, a municipality where the least progress has been made in relation to the return of the Serbs, on which occasion the Prime Minister again stressed that "we wish to build a new future, for all our citizens".

Overview of implementation of the Agreement with SDSS

In its Human Rights Report for Croatia, the State Department mentions that the Croatian Government in 2004 strengthened its efforts on the return of refugees, especially in the area of reconstruction and restitution of illegally occupied houses. A total of about 80% of assistance in the reconstruction of houses was provided for the Serbs, which follows on the trend of 2003 when the total reconstruction of Serbian houses amounted to 75%. According to this report the number of legally and illegally occupied properties has been significantly reduced.⁷ However, it also mentions that, in cases dealing with the restitution of property, laws still implicitly favour the Croats over the Serbs and that another 1,750, mostly Serbian, refugees could not access their property occupied by Croats.

About 12,478 people returned from Serbia and Montenegro in 2004. According to the Government's data, an average of 115,148 refugees (mostly Serbs) have returned to the country since 1995. The repossession of occupied private property, mostly owned by Serbs, also significantly speeded up the process of reconstruction of damaged and demolished houses. During 2004, the Government reconstructed 9,000 houses and flats of mainly Serbian returnees. The repossession of occupied property was also accelerated, although, as it seems from available reports,⁸ the Government in 2004 was still giving precedence to the rights of the temporary occupants, mostly Croats, over the rights of the legal owners, minority Serbs. The number of legally occupied houses and flats was reduced from about 3,500 in January to 1,197 in September. The number of illegally occupied houses and flats was reduced from an average of 500 in January to about 54 in December. Also according to UNHCR records from 2000 to 2005 (especially since 2003), great strides were taken at the national level, and repossession of property was executed in about 94% of cases.⁹ However, the problem of accommodation of former tenancy right holders, mostly ethnic Serbs, to socially-owned property is still present. The Government has adopted a number of

measures to allow former tenancy right holders in Zagreb and other large cities to rent or buy flats built by the state at a reduced rate. Although efforts have been made towards the restitution of lost tenancy rights to socially-owned property, real progress has yet to be made.¹⁰

Difficulties in implementing the Agreement within the set timeline did not escape this Government either, and increasingly frequent complaints were heard during the year from the leaders of the Serbian minority, which "peaked" in the spring of 2004. At the request of minority leaders and NGOs, the timelines for the regulation of foreigner status and the submission of claims for housing care, for the repossession of property and compensation in areas (outside areas of special state concern) where no laws can be applied, was extended.¹¹ Although the "end of the coalition" was increasingly stressed in the media due to the obstruction of return and non compliance with the Agreement, it is obvious that both contractual sides tended towards a compromise, and that the HDZ leadership was continuing to show readiness to implement the Agreement.

A meeting of Prime Minister Ivo Sanader and his associates with the representatives of the Independent Democratic Serbian Party

In order to intensify return and encourage the provision of information, the Government initiated a public information campaign and extended the deadline for the submission of claims by former users of flats in areas that were not affected by the war to September 2005.

(SDSS), Milorad Pupovac and Vojislav Stanimirović, was held in March 2004, confirming the agreement that a Government Commission would supervise

the implementation of the Agreement. After the meeting, Sanader said, *"There are certain problems in implementing this Agreement in the field, and at today's meeting all doubts have been cleared"* (Hina, 25 March 2004).

It was decided that the Commission would make sure that the most important item of the Agreement be implemented within the set timeline, 30 June 2005, in other words, the restitution of illegally occupied property to their rightful owners, and that the task of the Commission was to find accommodation for the people who had been occupying this property and who did not have any other solution. On that occasion, Milorad Pupovac stressed that all guarantees had been given, that all the rulings on reconstruction claims which had been submitted in due time would be issued by the end of April, and that they had established the dynamics of restitution of about 500 housing units to their owners by the end of July.

As for the restitution of tenancy rights, in August 2004 the Government admitted that they had only to begin implementing this

package of measures. In order to intensify return and encourage the provision of information, the Government initiated a public information campaign and extended the deadline for the submission of claims by former users of flats in areas that were not affected by the war to September 2005. It was concluded at the last meeting of representatives of NGOs, the Ministry, and UNHCR that neither the campaign nor the provisions had borne any results.¹² NGO representatives considered that the Housing Care Campaign implemented by the Croatian Government and UNHCR was inadequately conceived because the deadline for lodging a claim for housing care, set for 30 June 2005, was too short, and the campaign itself did not present examples of positively resolved claims, which was of key importance to motivate people to submit claims. Until now, there have been 2,350 claims, out of which 980 relate to rent, and others to the purchase of flats. Priority will be given to claims for renting flats. However, to begin resolving these issues it is first necessary to resolve the issue of state-owned property, because the flats are mainly registered as socially owned or owned by individual companies, and only when they are registered as state property may the procedure continue, and thereafter they can be sold.

Besides the mentioned housing care scheme (Government of the Republic of Croatia and UNHCR) which began 10 months later than had been foreseen, and thus the time to submit a claim was in real terms reduced, there is also the pro-return campaign conducted by the Croatian Government, OSCE, and the Serbian Democratic Forum (SDF). However, the opinion of NGOs is that none of these campaigns has been visible enough to the public, either in Serbia or in Croatia. Besides pointing to the inadequacy of these campaigns and requesting an extension of deadlines, NGO representatives also express doubt in the existence of political will to provide housing care, since HRK 21 million from the 2004 budget which had been allocated to housing care was not spent but reallocated to reconstruction. In the case of devastated property, the Ministry of the Sea, Transport, Tourism and Development proposed to the Directorate for Reconstruction to resolve cases of devastated property through a settlement: reconstruction or payment in cash. According to the experiences of NGOs, settlement often proves to be a fiction because the assessment of the value of the property is not realistic.

The part of the State Department report dealing with the processing of war crimes

mentions the problem of trials for war crimes, which are still considered to be “ethnically biased against the Croatian Serbs”. The OSCE report stresses that criminal prosecution for war crimes is still more motivated by *“ethnic factors than by an impartial administration of justice”*. The report states that a different rate of convictions and acquittals was recorded depending on the ethnic identity of the accused - 67% of ethnic Serbs were convicted compared to 25% of ethnic Croats.¹³ The CHC report also states that proceedings in the absence of the accused, *“in spite of efforts to reduce this practice, involved almost exclusively Serbs”*. The OSCE Mission, which monitors and reports on domestic criminal proceedings, stresses the lack of impartiality, the pressure made on witnesses and the need for the additional training of judges and prosecutors.

Pursuant to electoral law, up to eight seats in Parliament are reserved for members of national minorities. Out of 152 members of Parliament, eight are elected into Parliament

Out of 152 members of Parliament, eight are elected into Parliament as minority representatives. At the November 2003 elections, members of minorities participated in larger numbers than in 2000, so that the Serbs elected three representatives.

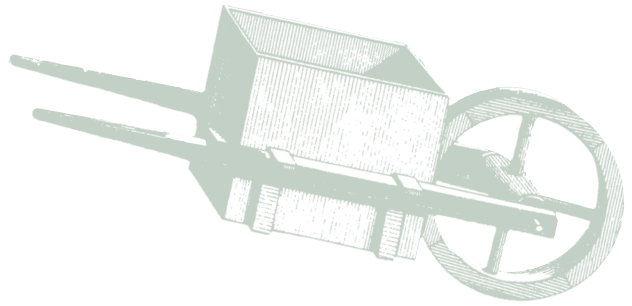
Economic and employment opportunities for minority returnees are scarce, due to discrimination in employment both in bodies of local government and in the public sector.

as minority representatives. At the November 2003 elections, members of minorities participated in larger numbers than in 2000, so that the Serbs elected three representatives. According to the law, minorities also have to be represented in local government bodies, provided that the share of minority members in the local population, according to the Census, reaches a specified percentage. This legal provision was mainly implemented after the Government and the Independent Democratic Serbian Party (SDSS) had signed the Agreement in December 2003, but it was not standardised across all the units of local self government. Elections for the local councils of minorities took place on 18 May 2003, but due to a lack of Government support, short deadlines and the poor organisation of the minority organisations, fewer than half of the councils, to which minorities are entitled pursuant to the Constitutional Act on National Minorities, were elected. Additional elections for members of the councils of national minorities were held on 15 February 2004 in 15 counties, 64 towns and 132 municipalities, with a turnout of about 8% of the total minority population.

Another big challenge for the sustainability of return of minorities, but also for the entire

Serbian minority, has been the difficult and slow economic development. Although the Government passed measures for the economic development of areas of return through the Act on Areas of Special State Interest, and although the first two operational plans have been drafted for the County of Zadar and the County of Šibenik-Knin, there are no specific measures designed for returnees. Economic and employment opportunities for minority returnees are scarce, due to discrimination in employment both in bodies of local government and in the public sector. The Constitutional Act of December 2002 binds the state to ensure a pre-war level of minority representation in local government bodies, as well as in state, county and municipal courts. However, in most areas the law has not yet been adequately implemented.

The SDF is conducting *ad hoc* field research on the employment of members of the Serbian minority in bodies of local government, the justice system, the police, public companies and the private sector in eighteen municipalities with a minority population and returnees.¹⁴ The findings of this study vary from municipality to municipality. However, they generally show an extremely low representation of members



of the Serbian minority in bodies of state administration and the justice system, and in many places they are not even ensured representation in bodies of executive power. The Agreement by which the Government made an undertaking to implement within 3 months the provisions of the Constitutional Act on National Minorities which guarantee minority representation in bodies of local and regional government (Article 22), according to this albeit preliminary research, has not been implemented, and the results show that the Government has not systematically met the obligation of the proportional representation of minority members in the police, the justice system and the public services.

Not even during 2004 did the Government accept, or “convalidate”, the legal and administrative documents of citizens of Serbian nationality (in most cases related to years of service) for the period of 1991-1995, which is another obstacle to the return and reintegration of Serbian refugees. Without the acceptance of these documents, minority Serbs cannot resolve a number of problems, from pensions and disability insurance to determining their work experience, which prevents them from exercising their social rights.

The attitudes of the majority population and refugee Serbs related to return

The attitude of the public towards the return of Serbs to Croatia has been slowly changing, but is still far from positive. With the aim of encouraging return, and through the organisation of a pro-return campaign in the countries of former Yugoslavia during 2003 and 2004, the OSCE Mission to Croatia, financially supported by the US Agency for International Development (USAID), conducted research on attitudes related to the return of refugees and attitudes related to the support to return.¹⁵ Research results show that out of 1,000 surveyed Serbian refugees from Croatia who live in Serbia and Montenegro, only 14% expressed a relatively strong intention of returning to Croatia, and only 5% firmly intend to return to their pre-war homes in the next five years, which confirms the doubts that, due to an excessively long process of return and discriminatory policies, a large number of Croatian Serbs have most probably decided to become permanently integrated in the country of refuge.

... as many as 65% of Croats who had lived in the areas from which the Serbs fled even before 1990 think that coexistence with the Serbs is, after all, mainly or wholly possible.

On the other hand, within the framework of the same research, the results of the Croatian research agency Puls show that there is still resistance among the Croats in Croatia to the return of the Serbs who fled, because about 63% of Croat respondents who live, and who had also lived before the war, in areas from which the Serbs fled, consider that the return of the Serbs is not a good thing for Croatia, and only 26% of local Croats in the post-war areas claim that it is good for Croatia if the refugee Serbs return to their homes.¹⁶ However, in spite of the negative attitude of the majority towards the return of Serbs to Croatia, as many as 65% of Croats who had lived in the areas from which the Serbs fled even before 1990 think that coexistence with the Serbs is, after all, mainly or wholly possible. About 30% of respondents consider that life with the Serbs is today impossible, while 6% do not have a clear view of this issue.

The identity policy of the Serbian minority

The factor which speaks most eloquently about the negative attitude and the still deep ambivalence of the Croatian public, as well

as of politicians, towards the attempts of the Serbian minority to begin building their “new” identity by way of various symbols, and thus exercise their rights guaranteed by the Constitution, are the media.

During 2004 and at the beginning of 2005, the easiest way of focusing on the challenges of the policy of the identity building of the Serbian minority in Croatia was by following the media. Although the media coverage of the Serbs, according to reports by the CHC, continues, with a falling trend in proclamations of hate, we cannot yet speak of a pro-minority media policy. There are two illustrative examples, and both relate (only) to symbols: the right of the Serbian minority in Croatia to a coat-of-arms and an anthem, and the change of names of the streets in Plaški.

The news that the Serbs in Croatia will soon have their coat-of-arms, flag and anthem, irrespective of the fact that such a right is guaranteed by the Constitution to all national minorities, was presented as a sensation in the media and was mainly received with animosity. A smaller proportion of politicians and experts consider that this was a legitimate and innocuous matter, but most of them, including Prime Minister Ivo Sanader and President Mesić, warn that, due to the recent

war, this issue remains a sensitive spot and that the representatives of the Serbian community in Croatia should take this fact into account. Journalist Darko Plevnik also speaks about a negative reaction to this move in the daily *Slobodna Dalmacija*. *“From ordinary citizens to the citizen-president Mesić comes a rerun of old films and fears: if the Serbs obtain what we have provided for them in the Constitution for the sake of the EU - their own symbols - they will again gain power and build themselves a state within a state, evoke Greater Serbia, and disrupt this painfully gained eschatological peace among the Croats.”*¹⁷

The newest example in Plaški relating to the decision of 22 March to change the names of streets, passed by SDSS, which is the ruling party in the area, was not received much better. The print media announced in unison that this move is *“a provocation threatening coexistence”* (Vjesnik), *“an example of irresponsible politics”* or *“a continuation of Chetnik provocation with Greater Serbia”* (Jutarnji list) calling on the leaders of the Serbian community to revoke the decision. On national television, HTV, in the most viewed programme, *Otvoreno*,¹⁸ the programme editor and presenter, besides insisting on describing this event as an

incident, also stressed her ethnic Croatian status, and with the choice of guests and the broadcasting of “offensive” telephone calls, allowed the untrammelled expression of opinions, such as the one that *“the idea of Greater Serbia, although defeated, still lives”* or that this is so because *“Chetniks are sitting in the Croatian Parliament”*.¹⁹

Such reactions have been further encouraged by the recent establishment of the “Republic of Srpska Krajina in Exile”, which was severely condemned even by the leaders of the Serbian minority in Croatia. However, at the same time in Croatia Ustasha symbols are glorified, monuments are raised, and different forms of extreme right-wing behaviour on the streets are tolerated. However, such a surplus of expression of national identity on the Croatian side does not cause an equal response of the public and the media, although positive moves have been made if we take into account the reaction of the leading party which, since the demolition of the monuments to Jure Francetić in Slunj and Mile Budak in Lovinec in the summer of 2004, has begun to consistently demolish Ustasha monuments and publicly condemn extreme right-wing outbursts.²⁰

In addition to spontaneous progress, which occurs every day and relates to relationships among people, steps forward have also been made in the relations of state institutions towards the Serbs “there is greater freedom in relation to services, and communication is more secure”.

Perspectives of the Serbian minority on the positive steps and key obstacles

A consultation meeting²¹ included nine representatives of the Serbian minority, also members of the Council for National Minorities, representatives of minority NGOs, other NGOs which deal with the protection of minority rights and the provision of free legal aid, and the representatives of local authorities from Dalmatia (Knin and Biskupija), Lika (Korenica and Vrhovine), western Slavonia (Pakrac), Karlovac and Zagreb. An individual interview was conducted with a representative of an NGO from eastern Slavonia (Osijek).

Perspectives related to positive steps

Key positive steps are mostly reflected in the fact that the Serbian minority is much less afraid of turning to institutions and to the public, and that communication is improving, as are the relationships between Croats and

Serbs at the level of the local community - *“a Serbian returnee today feels much better, he is able to walk around without holding his head down”*, and people are becoming increasingly focused on economic survival so that *“nationality is no longer as important as it used to be in the previous period”*. Excessive behaviour is subsiding, and communication among the members of different nationalities in the population has in general improved. In this case, communication is easier with “local Croats, while it is more difficult with immigrants, usually due to property legal relations”. Proclamations of hate in the media are not as evident, although there is no significant progress in the sense of promoting an anti-discrimination policy towards the Serbian minority. *“If a Serb commits robbery this will always be emphasised”*.

Other key steps are visible in the fact that the coalition with SDSS at a local level has generally been realised, that councils of national minorities have mostly been established and included in the budget of the municipalities in which they are located and where they cooperate relatively well with the local authorities. However, for the moment, the representatives of the Serbian minority are only being duly informed, but

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they do not yet play a significant role in decision making.

In addition to spontaneous progress, which occurs every day and relates to relationships among people, steps forward have also been made in the relations of state institutions towards the Serbs - *“there is greater freedom in relation to services, and communication is more secure”*. Improvements are greater in places where their numbers are higher and where they are part of the authority or where “Serbian parties” are in power. Positive steps have also been taken in terms of the repossession of property and reconstruction; reconstruction of houses has generally been accelerated in the last two and a half years, but the same is not true of flats. Differences in these positive steps are also visible both inside and outside areas of special state concern. Nevertheless, the same rights, despite equal requirements, cannot be exercised in different municipalities since much depends on the attitude of the officer receiving the applications. The situation is not the same in all regions, and the situation is also different depending on the total number of persons of Serbian nationality in certain settlements or regions.

Certain positive steps have also been recorded in a few settlements where the

majority in power is Croatian, such as Knin (Serbs have, for the first time, been employed in the school), while in others, such as Korenica, no such steps have been taken, although qualified staff exists. In some local communities, even in those where Croatian immigrants are in power, this progress is insignificant, but a great improvement lies in the attitude of the *“local authorities who are now considering the possibility of employing members of Serbian nationality”*. The abolition of visas for Serbian citizens is *“also being considered at the local level”*. This has had a significant effect on the return and reunion of family members who lived apart. These positive steps also depend on the activities of the Serbian population, *“if they are more active, there are more positive steps”*, and *“people are now more aware of their rights”*.

The question that arises when speaking about the significance of these positive steps is whether these steps are sufficient. In observing them in the context of a period of ten years following the end of the war, these steps are tiny ones, progress is very slow and does not follow *“a natural path, but is there more because it is imposed by different commitments related to EU accession”*.



Perspectives related to obstacles and problems

A great obstacle preventing the same provisions from being implemented equally in all areas is the obvious inequality in the implementation and interpretation of regulations. A more significant barrier is the long duration of court proceedings in resolving status issues. The current problems and obstacles are also visible in the fact that status issues have not been fully resolved. The housing care of former holders of tenancy rights has not been resolved either. In some areas, discrimination on the basis of nationality in employment still occurs; *"there are no persons employed in administration and public companies"*, and the total employment of employable members of the Serbian minority is insignificant, or has just begun. Another large obstacle is the fact that representatives of the Serbian minority in local authorities are still seen as a necessary evil *"they are an imposed solution"* - and not as equal participants in the decision-making process.

Part of the problems and obstacles is certainly connected with the work of the councils of

national minorities which include *"people who have insufficient awareness and who are not prepared to channel the interests of the population of Serbian nationality towards instances of authority"*. The representatives of the minority itself also often *"see them in this way and do not count on them when it comes to protecting their own rights and interests"*. For now, only political parties have political influence, and the work of the councils, in the true sense of the word, is still questionable. In some communities, where the councils have already begun operating, their work is also thwarted by polarities between party and non-party councillors. However, even citizens of Serbian nationality, discouraged by the economic situation, are not interested in political issues and do not make an effort to become proactively involved in exercising their rights.

In areas of special state concern, where the development of a communal infrastructure as the basis of economic revitalisation is still inadequate, and where the economic situation poses a large problem for everyone, minority Serbs in particular, *"a kind of social ghetto is taking shape, inhabited by the Serbs"*. Specific administrative obstacles and a lack of opportunities to exercise social rights is also related to the poor management of county

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records, archives of public services and companies, or criteria, which are particularly evident in convalidation cases, for which the deadline expired in 1998, and which are now a topical issue in the area of the County of Lika-Senj. Thus, for example, the documents needed to exercise the right to a retirement pension, which has to be preceded by a record of years of service for the period before 1991, may be located for some people, while for others these documents cannot be found, although they all used to work together at the same time: *“even those who succeeded in lodging a claim in time must have a “qualified witness” in addition to all the material evidence, which means a living workmate whose years of service in the specified job have already been recognised”*. Access to information is not fully possible, and the costs for the retrieval of documents are too high.

Conclusion and recommendations

Although certain positive steps have been taken in terms of the internal political framework and the normalisation of relations between the majority and minority population in local communities, leading to the conclusion

that, in this sense, there is a general trend of society opening up towards the Serbian minority, the study shows that there are still significant obstacles to the full affirmation of the Serbian national minority in Croatian society.

In spite of the constitutional protection of minorities, of the continuity of affirmative state politics since 2000, of concrete efforts made by Ivo Sanader's Government, and the improved position of the Serbian national minority in 2004 which was the result of these positive changes, in practice there is still discrimination against the Serbs, particularly in the justice system, in social protection, in employment and in the resolution of property issues. There are also numerous challenges related to the consistent exercise of the right to political participation at regional and local level. In addition, there is still a deep ambivalence, or negative attitude, of the public towards moves made within the “politics of symbols”, or within the process of shaping the identity of the Serbian minority in Croatia.

The factors that have until now contributed to the positive steps and their reasons are the pressures made by the EU, and the need to harmonise the Croatian legislation with



The factors that have until now contributed to the positive steps and their reasons are the pressures made by the EU, and the need to harmonise the Croatian legislation with European legal standards.

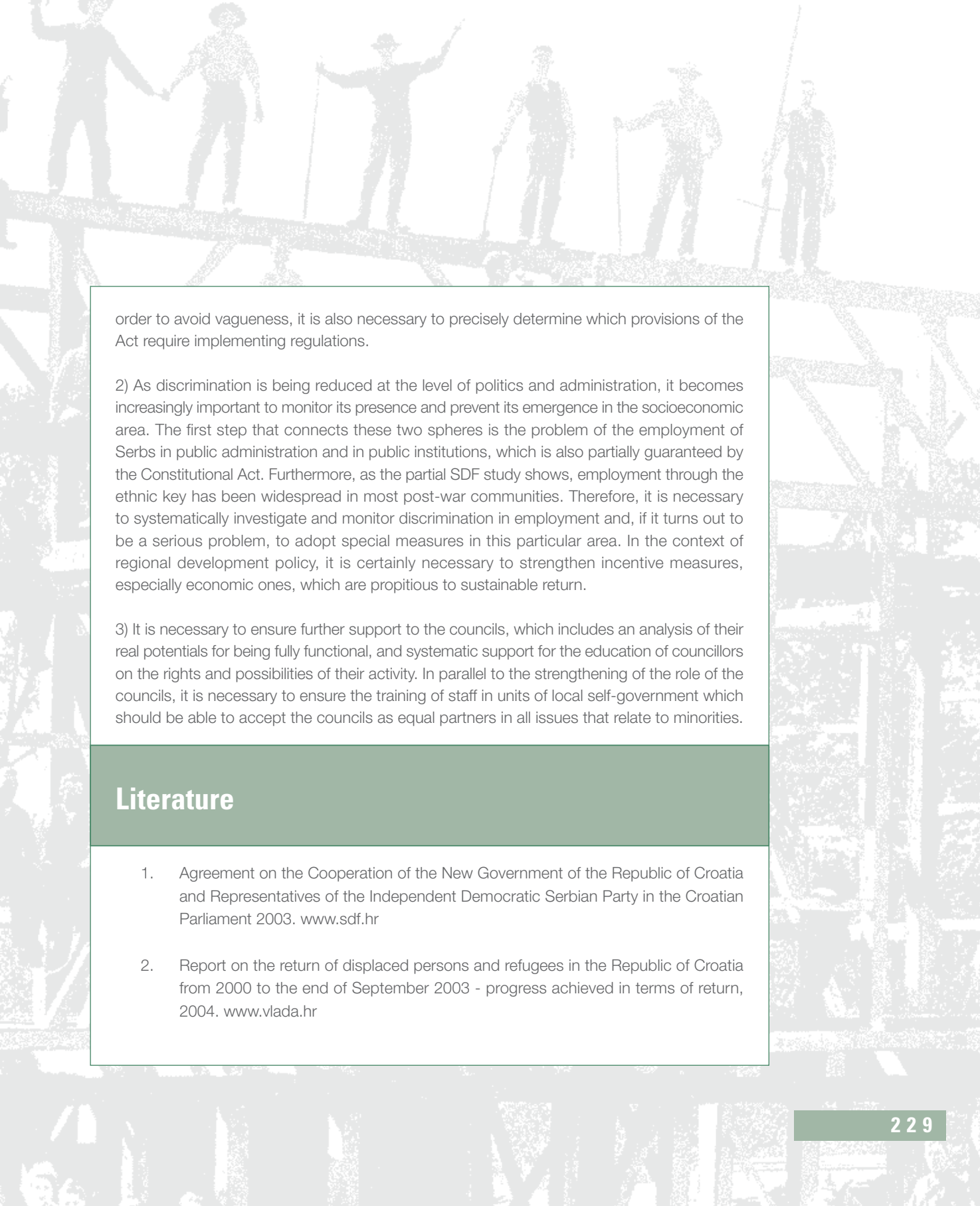
European legal standards. Therefore, it is crucial to achieve agreement and unity among the international community that return, reintegration and a non-discriminatory relationship towards minorities are of key importance for the democratisation of Croatia, which cannot expect to develop further in the direction of European integration until its results are in harmony with the rule of law and international regulations relating to respect of basic human rights. Other important factors are the agreement between the Government and SDSS, and a marked change of direction in the political rhetoric of the ruling HDZ.

In order to resolve the problems faced by the Serbian minority in Croatia, the changes in the direction of improving the position of the Serbs in Croatia must become real, and not just declarative. The Constitutional Act on Minorities must be implemented to the letter, and the mechanisms for monitoring its implementation should be secured and strengthened. It is necessary, and as urgently as possible, to advocate changes related to the proportional inclusion of minorities into the public sector.

It is important to work systematically and with focus on the removal of unemployment, and on the local socioeconomic development of the post-war areas to create the preconditions for sustainable return. It is necessary to review the deadlines for reconstruction, convalidation, and housing care outside areas of special state concern, because an acquired right should not be limited by deadlines. It is certainly crucial to conduct further education and raise the political awareness of the members of the Serbian national minority to enable them to use all the institutional mechanisms which should be put at their disposal. At the same time, work should be conducted on making all political factors send messages to the public and the population, promoting antidiscrimination values and the protection of human rights and the rights of minorities.

The following three recommendations are stressed as particularly important for removing the current obstacles to the equality of the Serbian national minority in Croatian society:

- 1) The key mechanism for exercising these rights is the Constitutional Act which should be thoroughly implemented. In doing so, it is crucial to intensify monitoring by the Council, the Government, and by NGOs. In

A background image showing several construction workers in silhouette, standing on a horizontal steel beam. They are holding tools like hammers and wrenches. The background is a blurred view of a construction site with various steel structures.

order to avoid vagueness, it is also necessary to precisely determine which provisions of the Act require implementing regulations.

2) As discrimination is being reduced at the level of politics and administration, it becomes increasingly important to monitor its presence and prevent its emergence in the socioeconomic area. The first step that connects these two spheres is the problem of the employment of Serbs in public administration and in public institutions, which is also partially guaranteed by the Constitutional Act. Furthermore, as the partial SDF study shows, employment through the ethnic key has been widespread in most post-war communities. Therefore, it is necessary to systematically investigate and monitor discrimination in employment and, if it turns out to be a serious problem, to adopt special measures in this particular area. In the context of regional development policy, it is certainly necessary to strengthen incentive measures, especially economic ones, which are propitious to sustainable return.

3) It is necessary to ensure further support to the councils, which includes an analysis of their real potentials for being fully functional, and systematic support for the education of councillors on the rights and possibilities of their activity. In parallel to the strengthening of the role of the councils, it is necessary to ensure the training of staff in units of local self-government which should be able to accept the councils as equal partners in all issues that relate to minorities.

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¹ According to official statistical data provided by the CBS, other minorities consist of Bosniacs (0.47%), Italians (0.44%), Hungarians (0.37%), Albanians (0.34%) and Slovenes (0.3%), and the share of Roma in the population amounts to 0.21%, but the real number is probably much higher, other sources speak of 22 national minorities in Croatia.

² According to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1993, the protection of rights of persons belonging to minorities should be ensured within the framework of the rule of law, by respecting the territorial integrity and national sovereignty of states.

³ The dissolution of the Socialist Federative Republic of Yugoslavia (SFRY) and the Croatian proclamation of independence in June 1991, was followed by an armed conflict between the Croatian army and the armed forces of the Croatian Serbs, assisted by the Yugoslav People's Army (JNA), which lasted until 1995. During the conflict, and after it ended, through the actions "Flash" and "Storm" in 1995 and the beginning of reintegration, huge and serious human rights violations were committed by both Croatian and Serbian forces, as well as by the JNA, marked with murders, disappearances and forced exiles of hundreds of thousands of people who left Croatia.

⁴ See a detailed overview of policies in Marina Škrabalo (2003), *"Documenting Impact of Community Peacebuilding Practices in the Post-Yugoslav Region as a Basis for Policy Framework Development"*, Research Paper, International Policy Fellowship Program, Open Society Institute Budapest, www.policy.hu/skrabalo

⁵ In terms of this provision this Act represents one of its kind in Europe according to the words of the President of the Council Alexander Tolnauer and the representative of the Jewish Community in Croatia in an interview with Igor Lasić. (Identitet, no. 71, February 2004) The Council was established on 16 April 2003.

⁶ Around HRK 22 million in budget funds were granted to the Council to distribute the funds.

⁷ The report on the return of displaced persons and refugees to the Republic of Croatia from 2000 to 2003, which was prepared by the former coalition government in October 2003.

⁸ Reports of the UNHCR, the State Department, Serbian Democratic Forum and the printed media "Naša stvarnost" and "Identitet".

⁹ The meeting with UNHCR was held on 21 March in Zagreb.

¹⁰ The Croatian authorities abolished tenancy rights for tens of thousands of Serbian families after they had fled from their flats during and after the war (the estimate is about 25,000).

¹¹ The deadlines for regulating foreigner status and for lodging a claim for housing care were extended by a Decree of the Government of the Republic of Croatia of 16 December 2004, published in the Official Gazette, *Narodne Novine* 182/04, and the period for the regulation of the status of foreigner with permanent residence, referred in Article 115 of the Aliens Act (NN no, 109/03) to 30 of June 2005. The Decree came into force on 1 January 2005. A conclusion of the Croatian Government of 9 December 2004 extended the period for submitting a claim for housing care by returnees who do not own a house or flat, and who used to live in socially-owned flats (former tenancy right holders) in areas of the Republic of Croatia which are outside areas of special state concern, to 30 June 2005. The conclusion came into force on 17 December 2004.

¹² From the Open Forum meeting of NGOs which deal with the provision of free legal aid, held on 22 March 2005.

¹³ Most of the accused are Serbs; 67% of the accused Serbs and only 25% of the accused Croats were found guilty. From January to October, 27 persons were arrested, out of whom 23 Serbs. Out of three indictments raised all were against Serbs, out of 105 persons that were tried, 85 were Serbs, out of 12 acquitted 9 were Serbs, and out of 20 convicted 18 were Serbs. In proceedings in the absence of the accused, in spite of positive steps relating to the revocation of such practice, only the accused Serbs were tried in this way. Furthermore, 21 persons are still in prison on charges for war crimes and similar offences for which the judgement was passed on the basis of politicised or non-transparent trials (HRW:2004)

¹⁴ These are the municipalities of Dvor, Petrinja, Glina, Plaški, Vojnić, Gvozd, Pakrac, Lipik, Daruvar, Korenica, Udbina, Donji Lapac, Vrhovine, Gospić, Otočac, Knin, Benkovac and Kistanje. (A study on the employment of members of the Serbian minority, December 2004 of the Serbian Democratic Forum)

¹⁵ A sample of 1000 Serbs from Croatia internally displaced within Serbia and Montenegro or Republika Srpska in Bosnia and Herzegovina, then 600 Croats who fled from Bosnia and Herzegovina settled in different parts of Croatia and 600 domicile Croats who lived in today's areas of return even before the war. The study comprised 1000 citizens of Croatia who live outside areas of special state concern, in towns which were not directly affected by the war, as a reference group to be compared with the attitudes of Croats living in areas of return, with the purpose of establishing to what extent the direct war experience, the loss of a home, created more radical attitudes towards Serbian returnees (OSCE: Croatia refugee challenge, Empirical research 2004).

¹⁶ The reasons given by those who do not support return are as follows: about 44% claim that the return of the Serbs would increase the negative tendencies in those parts, 33% claim that they are afraid that the Serbian returnees will start the war again, 28% are convinced that the return of the Serbs will additionally increase the existing large unemployment in those areas devastated by the war. From the group of return advocates, 56% claim that the return of the Serbs is a good thing because it will help Croatia to join the European Union, only 25% want the Serbs to return because Croatia is also their homeland, 14% support the return of the Serbs because this will increase the number of people living and working in the war-devastated areas, 8% want the return of their Serbian neighbour because they think it is a pity that their houses are empty, while 15% give some other reason.

¹⁷ Slobodna Dalmacija, 4 June 2004

¹⁸ HTV, Otvoreno, 24 March 2005, programme editor and presenter: H.N. Srzić

¹⁹ Besides Milorad Pupovac, the guests of the show were a member of the Croatian Party of Rights (HSP), two representatives of the immigrants from Bosnia and Vojvodina, and Peter Semneby, Head of OSCE Mission to Croatia, who took, on that occasion, a de-symbolisation stand, in other words, gave the examples of South Africa and the naming of streets after "trees, numbers or fruit".

²⁰ All this happened in the context when Croatia had received the decision on the postponement of negotiations with the European Union (16 March) due to its insufficient cooperation with the Hague Tribunal and the failure to surrender Ante Gotovina who, according to a number of media reports, enjoys high support of Croatian citizens.

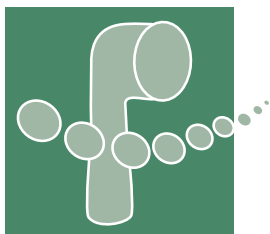
²¹ The meeting was held on 22 March in the premises of the Open Society Institute in Zagreb.





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About us



Open Society Institute - Croatia (OSI-Croatia) is a non-profit private foundation, a part of the Open Society Institute and the Soros Foundations Network, established and financed by philanthropist George Soros.

Open Society Institute - Croatia implements a range of initiatives to promote open society, by supporting education, media, public health, human rights, as well as social, economic and legal reforms, connecting non-governmental organizations, international institutions and government agencies with an aim of promoting open societies on a global level. The Foundations' Network was founded by George Soros to support changes in Central and Eastern Europe and former Soviet Union.

In the recent years, the activities of the Soros Foundations' Network have expanded to other areas of the world where the transition to democracy is of particular concern. The network encompasses more than 50 organizations, in Africa, Latin America, Central Asia and Southeast Asia and the USA, apart from the European transitional countries and Turkey.

Open Society Institute - Croatia was established in 1992, in order to assist the democratic development of Croatian society. After the initial stage during which the Foundation provided substantial humanitarian help for the country in war, it sponsored a

number of initiatives in the fields of civil society, education, media, arts and culture, public health, law and economy, with the total amount of more than 45 million USD, and contributed considerably to the creation and development of the civil society in Croatia. During the 90-es, the OSI-Croatia operated in an environment that was not very inclined to it; the OSI-Croatia actively criticized the dominant political and social models, presenting alternatives to the authoritarian and nationalist values and practices, and, by doing so, contributed to the political shift. In the new circumstances of social changes, the OSI-Croatia's strategy developed in a way that it moved from the grant-giving into running its own in-house projects, on its own or in cooperation with its partners.

The new role and new goals require adequate tools: in our case the proper tools are activities that enable systemic influence without leaving the critical standpoint. These tools can be applied not only to accelerate processes started by the Croatian Government and its institutions, but also to influence their content and direction. In the context of Croatian integration into European Union, the OSI-Croatia will encourage and support civil society initiatives, particularly those directed to support minorities and marginalized groups, as well as projects focused on reforms and changes.



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Notes on the authors



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Velimir Šonje works on activities relating to macroeconomic and financial analyses (Economic Institute - Zagreb, Croatian National Bank, Raiffeisenbank, and his own company, Arhivanalitika), and also occasionally publishes papers which go beyond the defined framework of macroeconomics and finances.

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Marina Škrabalo is co-owner of the company MAP Savjetovanja and a long-term associate of NGOs; she deals with applied research, training and organisational interventions related to societal development initiatives and programmes.

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